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BUREAU OF STATE AUDITS

Statewide Procurement Practices:

Proposed Reforms Should Help Safeguard State Resources, but the Potential for Misuse Remains

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March 26, 2003 2002-112

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning statewide procurement practices.

This report concludes that, while proposed reforms to procurement practices should help safeguard state resources, additional changes should be made to reduce the potential for misuse. Before the governor's May 2002 Executive Order called for sweeping reforms in the State's contracting and procurement practices, departments generally ignored the policies and procedures established by the Department of General Services (General Services) for the use of the California Multiple Award Schedules (CMAS). However, in the months immediately following issuance of the Executive Order departments more consistently obtained competing quotes from CMAS vendors. In addition, a lack of centralized accountability over the state Web portal project resulted in undisclosed costs and violations of state policy.

Ensuring that the State receives the best value when acquiring goods and services requires all state departments to make changes in their purchasing procedures. In addition, General Services needs to strengthen its review of sole-source contracts and emergency purchases and its oversight of other state purchasing activities, including the use of CMAS and master service agreements. The Governor's Task Force on Contracting and Procurement Review (task force) recommended significant changes to the State's contracting and procurement procedures. However, since the task force made its recommendations in August 2002, only a few have been fully implemented and these few recommendations have not been in effect long enough for us to measure their effectiveness.

Respectfully submitted,

Elaine M. Howle

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State Auditor

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SUMMARY

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Our review of the State's California Multiple Award Schedules (CMAS) program and sole-source and emergency procurement practices revealed the following:

- ☑ *Until the governor's May 2002 Executive Order requiring departments to adhere to stricter contracting and procurement procedures, departments did not compare prices among CMAS vendors.*
- ☑ *Inadequate oversight and administration by the Department of General Services (General Services) contributed to the problems we identified with departments' purchasing practices.*
- ☑ *Without comparing prices, the State purchased millions in goods and services for the Web portal project from vendors that played a role in defining the approach and architecture for the project.*
- ☑ *Estimated Web portal project costs given to administrative control agencies and the Legislative Analyst's Office were sometimes inaccurate.*

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RESULTS IN BRIEF

State departments spend billions of dollars each year using the California Multiple Award Schedules (CMAS) program, master service agreements (MSAs), sole-source contracts, and emergency purchase orders. However, until an Executive Order required extensive reforms, many departments ignored the guidelines the Department of General Services (General Services) developed to ensure that state resources were not wasted. Specifically, departments did not always compare prices or evaluate other factors when selecting vendors from the list compiled by the CMAS program—vendors that have agreed to sell specific products and services at approved prices throughout the terms of specific contracts. In addition, departments frequently misused sole-source contracts and emergency purchases. While state departments are responsible for complying with laws and policies governing purchasing, many of the problems with their purchasing practices were exacerbated by inadequate oversight and administration of those practices by General Services, which is responsible for setting guidelines for using the CMAS program, approving CMAS and noncompetitively bid contracts, and performing periodic audits of certain CMAS transactions and vendors and noncompetitively bid contracts.

The Bureau of State Audits has issued a number of reports pointing out weaknesses in the use of the CMAS program and noncompetitively bid purchases, the most recent of which was our April 2002 report titled *Enterprise Licensing Agreement: The State Failed to Exercise Due Diligence When Contracting With Oracle, Potentially Costing Taxpayers Millions of Dollars*. Attempting to eliminate the faulty practices of purchasing departments, the governor issued an Executive Order in May 2002 requiring departments to adhere to interim guidelines created and implemented by General Services. In August 2002, responding to the Executive Order, the Governor's Task Force on Contracting and Procurement Review (task force) recommended sweeping changes to the State's contracting and procurement procedures. General Services provided staff support to the task force and developed the recommendations for the task force's consideration and is responsible for implementing those recommendations.

- ☑ *Before the Executive Order, departments frequently misused alternative procurement practices—sole-source contracts and emergency purchases.*
- ☑ *General Services' procedures for adding new vendors and products to the CMAS list are weak.*
- ☑ *Recent improvements recommended by General Services and the Governor's Task Force on Contracting and Procurement Review should address many of the weaknesses we identified, but further changes are needed.*

One example of making a CMAS purchase without comparing prices or determining the best value is the Department of Corrections' purchase of $4.6 million in computer hardware maintenance services. Another significant example of using the CMAS program without comparing vendors' prices occurred in the project that developed the state Web portal—an award-winning Web site from which California's citizens can access information on various state services. For this project, the Stephen P. Teale Data Center (Teale Data Center), the Health and Human Services Data Center, and two units within General Services, largely at the request of two former officials of the Governor's Office, purchased more than $3.2 million in goods and services from one CMAS vendor. Further, General Services and the Health and Human Services Data Center purchased $8.4 million in consulting services for the Web portal using CMAS and an MSA. However, despite General Services' own recommendation to compare vendor prices when using the CMAS program and the terms of the MSA, neither General Services nor the other state entities involved in purchasing goods and services for the Web portal did so.

Moreover, the State purchased $2.5 million in goods and services from private companies that played roles in defining the conceptual approach and specific architecture for the Web portal. Because, as in the case of most other purchases for the Web portal, these companies' products were selected without price comparison, questions of fairness exist. Additionally, even though General Services was responsible for the administration of the project, the former officials of the Governor's Office directed many of the purchases used to develop the Web portal, resulting in a lack of accountability over the project. Consequently, estimated project costs given to administrative control agencies and the Legislative Analyst's Office were sometimes inaccurate and potentially misleading. The Teale Data Center is now responsible for the management, maintenance, and support of the Web portal project and has achieved some reductions in cost through competitive bidding.

Another defect in state procurement practices that occurred frequently before the Executive Order was departments' misuse of emergency purchase orders and sole-source contracts—contracts in which only one vendor is selected because only that vendor can meet the State's needs. These alternative procurement practices, when misused, call into question the reasonableness of prices paid for goods and services and the possibility of unfairly restricting competition. For

instance, eight of 23 requests for sole-source contract approval we reviewed did not demonstrate that they met statutory requirements. Similarly, for 17 of 25 other purchase requests we reviewed, departments did not sufficiently document that the situations warranted emergency purchases, departments' poor planning resulted in the need for quick purchases, or departments believed that they had special needs. In one instance, the Department of Motor Vehicles, on behalf of the California Complete Count Committee, purchased $125,000 in teddy bears for the Census 2000 campaign, stating that it needed the bears to entice citizens to complete their census forms. While the purchase did not fall within the exceptions to competitive bidding requirements, General Services approved the department's purchase request.

Insufficient monitoring and oversight by General Services has contributed to an environment that has allowed these purchasing practices to continue virtually unabated. Specifically, General Services has not adequately reviewed requests for sole-source contracts and emergency purchases before approving the requests. Only 15 of the 23 sole-source contract requests we reviewed included documents justifying the departments' requests. Nonetheless, General Services approved all 23 requests.

General Services' inability to properly administer and monitor state purchasing practices is also evident in the failure of its Procurement Division to conduct consistent and prompt compliance audits of state departments' contracting and purchasing practices. Moreover, since fiscal year 1998–99, Audit Services completed only 19 audits of the 40 departments it includes in its rotational audit plan, and General Services has not fulfilled its responsibility to review current CMAS vendors. Further, General Services' procedures for adding new vendors and products to the CMAS list are weak, relying too heavily on the strength of contracts between the vendors and other government entities. Specifically, General Services needs to take additional measures to ensure that local governments and other states that award multiple-award contracts—contracts on which CMAS contracts are based—truly compare prices of goods and services to those offered by competitors. In one instance, a contract established by the Merced County Fast Open Contracts Utilization Services program was used as the basis for a CMAS contract with the StateStore Incorporated (StateStore), a vendor repeatedly used to make purchases for the state Web portal. However, we found that Merced County does not have procedures to competitively assess all contract amendments. As

a result, General Services could not ensure that the costs of the goods and services purchased through the StateStore's CMAS contract were fair and reasonable.

General Services also needs to improve its information technology (IT) systems for the CMAS program. Several departments we visited complained that the current system was too cumbersome and did not contain the information needed to make efficient CMAS purchases. For instance, access to vendor product and pricing information is severely limited. Additionally, unlike similar departments in some states, General Services does not have copies of CMAS contracts online, although it directs departments to document certain portions of the contracts when making purchases. Many departments contend that it is difficult to obtain copies of the contracts from General Services or the vendors, making it hard to comply with General Services' direction.

Further, General Services IT systems for the CMAS program contain inaccurate expenditure data. According to reports prepared from General Services' Procurement Information Network (PIN) system, which captures data on CMAS purchases, departments spent $889 million purchasing goods and services from CMAS vendors in fiscal year 2000–01. In comparing data in the PIN system to data at departments, we identified several transactions in which wrong amounts had been entered and others that were entered more than once. To recoup the cost of administering the CMAS program, General Services charges each state department a fee for purchasing goods and services from CMAS vendors. The fees are based on the purchase amounts recorded in the PIN system. Therefore, errors in the PIN data result in over- or undercharges to the departments. For the 10 billings we reviewed, General Services overcharged departments more than $219,000 for its services. However, General Services' PIN system did not contain records of some purchases made by departments, leading us to believe that not all departments are reporting their purchases as required.

Prompted by the May 20, 2002, Executive Order, General Services issued interim guidelines on May 28 that establish new restrictions on purchasing. In addition, the task force proposed changes in the State's contracting and procurement procedures that should address most of the weaknesses we identified. However, since the task force made its recommendations in August 2002, only a few have been fully implemented and these few recommendations have not been running long

enough for us to measure their effectiveness. Nonetheless, if properly implemented, the policy changes would place stricter requirements on the use of multiple-award contracts by California departments than do the policies of several other states. The task force's goal in recommending the changes was to ensure that state departments use open and competitive bidding whenever possible. In line with that goal, one of the most notable reforms requires state departments to obtain three price quotes before purchasing from a CMAS vendor. Another critical recommendation is to prohibit the use of CMAS contracts or MSAs for acquisitions related to large IT projects. This prohibition, if enforced, relates directly to purchases made in developing the state Web portal. The task force agreed that MSAs and the CMAS program were not designed to be used for such complex projects and acknowledged that stringing a series of CMAS or MSA purchases together to implement a large IT system circumvents the controls and oversight built into the State's IT acquisition process.

In response to other task force recommendations, General Services has placed significant restrictions on the use of non-competitively bid contracts (that is, sole-source contracts and emergency purchases) and plans to increase its level of audits and legal reviews for all contracts and other purchasing vehicles. Unfortunately, because of limited resources and other restrictions, the effect of many of the task force's recommendations will likely not be felt for several years. For instance, the task force acknowledged that upgrading General Services' existing IT system and developing a comprehensive training program for state purchasing personnel are long-term projects.

RECOMMENDATIONS

Ensuring that the State receives the best value when acquiring goods and services requires all state departments to make changes in their purchasing procedures, including the following:

- State department officials should stress adherence to CMAS and sole-source contracting requirements and reject requested purchases when these requirements are not met.

- State departments should institute procedures to accurately identify and monitor their procurement needs to ensure that sufficient time exists to properly plan for the acquisition of

goods and services. Additionally, departments should continuously assess the effects of legislative and other requirements on their procurement needs.

The Teale Data Center, which has assumed responsibility for the management, maintenance, and support of the state Web portal project, should continue to competitively bid purchases for the project and maintain accurate and clear accountability over project cost estimates and expenditures.

As the administrator of the State's contracting and purchasing procedures, General Services should take the following actions:

- Increase the frequency of its audits and reviews of CMAS vendors.
- Obtain assurance that other government entities' processes for awarding and amending multiple-award contracts are in accordance with CMAS goals before accepting these contracts as bases for CMAS contracts.
- Implement the recommendations made by the task force. Immediate actions General Services should take include the following:
  - Enforce the laws that limit the conditions under which the State can make sole-source and emergency purchases. If General Services believes it is in the State's best interest to grant more latitude for making noncompetitively bid purchases, it should seek changes in legislative authority for such purchases.
  - Consider reducing or eliminating the delegated purchasing authority of departments that fail to comply with contracting and procurement requirements.
  - Consult with departments to determine what can be done to facilitate monthly reconciliations of CMAS purchasing and billing activities.
  - Explore the cost of upgrading its existing Web site to include more comprehensive information about CMAS vendors, including a complete price list of available goods and services for each vendor.

AGENCY COMMENTS

General Services and the Teale Data Center agree with our recommendations. Accordingly, both departments stated that they would take the necessary actions to address the recommendations. In fact, General Services indicated that it has already begun to implement many of the recommendations in our report. ■

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INTRODUCTION

BACKGROUND

The State has established processes for departments to use when acquiring goods and services. Competition is typically at the core of these processes, which are designed to promote fairness, value, and the open disclosure of public purchasing. State law and the policies of the Department of General Services (General Services)—the State's contracting and procurement oversight department—generally require state departments to conduct a competitive bidding process that gives vendors an opportunity to submit price quotes or proposals for purchases of goods costing $25,000 or more and for services valued at $5,000 or more, with certain exceptions. Public policy strongly favors competitive bidding, and state contracts established without competitive bidding are limited by either statute or Executive Order.

However, the traditional process of competitive bidding that departments generally must use to make purchases can be lengthy. A department typically prepares a request for proposal or an invitation to bid that, among other things, describes the product or service it wants, invites prospective vendors to submit written proposals or bids that identify their prices, and describes the procedures the department will use to evaluate the proposals. After advertising its request for proposal, the department evaluates the proposals received, selects a winning vendor or vendors, and resolves any protests filed by losing vendors. Information from General Services indicates that the process often takes from three to eight months, depending on the nature of the good or service, the number of vendors bidding, and the number of protests filed, among other factors.

California Multiple Award Schedules Program

General Services has developed several procurement methods that are intended to be competitive but include procedures generally not found in standard competitive bidding. One such method is the California Multiple Award Schedules (CMAS) program, which is based on the federal multiple-award schedules (FMAS) program. The CMAS program relies on competitively established contracts between other government entities and multiple vendors. Each vendor on the CMAS list agrees to

provide an indefinite quantity of some good or service throughout a contract term for no more than an approved price—a price usually reserved for high-volume purchases.

According to legislation enacted in 1993, the CMAS program was intended to reduce the time and administrative expense state departments incurred acquiring information technology (IT) goods and services under traditional procurement processes while preserving reasonable price protections. Although departments initially could use CMAS vendors for IT goods and services, such as electronic data processing equipment and maintenance services, and non-IT goods, such as furniture and copiers, they can now use CMAS contracts to purchase non-IT services, such as photography and records management. As a result of an Executive Order dated May 20, 2002, General Services issued interim guidelines that required departments to obtain three offers (price quotes) from vendors before purchasing any goods or services from CMAS vendors. Before the Executive Order, General Services had recommended but not required that departments compare prices. Appendix C provides an overview of the CMAS requirements in effect before and after the Executive Order.

General Services oversees the CMAS program and is responsible for developing and maintaining the program's policies and procedures. General Services also provides workshops and guidance for state departments, CMAS vendors, and prospective vendors and has established processes designed to screen out irresponsible vendors. Further, General Services is responsible for awarding and amending the State's CMAS contracts. Once contracts for specific goods or services are established, General Services prepares a list of multiple-award schedules that contain relevant information on vendors approved to sell the specific goods or services to state departments.

Using vendors from the approved CMAS list allows departments to purchase goods or services without going through the lengthier process of identifying and evaluating potential vendors. For example, a department intending to purchase a camera using a CMAS vendor would first obtain the schedule listing the names of all the approved camera vendors and providing other information the department needs to make a purchasing decision. Although a department must solicit and obtain, if possible, offers from three vendors for the good or service it wants to purchase, the department can also consider qualitative factors, including the quality of the product or service, reliability of delivery and

implementation schedules, warranties and return policies, and vendor expertise in addition to price when determining which vendor provides the best value.

Under the CMAS program, the State does not conduct its own competitive bidding process to establish its vendor list. Instead, CMAS contracts are awarded to vendors that have already been awarded contracts with the FMAS program or a similar program operated by another state or local government entity. However, General Services does require each vendor to submit, among other things, product and price lists that the other government entity approved when awarding its contract. These products are generally the only ones the vendor can sell and departments can buy through the approved CMAS contract. For example, a vendor that is listed to sell desks but not chairs cannot sell chairs through a CMAS contract. Under the CMAS program, General Services currently imposes a spending cap of $500,000 for each purchase of IT goods and services, $250,000 for each purchase of non-IT services, and $100,000 for each purchase of non-IT goods made by a department.

General Services approves vendors to sell goods or services through the CMAS program in two ways. If a vendor agrees to provide goods or services to the State on the same terms as it does to the FMAS program or to another government entity's multiple-award contract, General Services will approve the vendor's application to become a CMAS vendor. Alternatively, a vendor that does not have an existing contract with the FMAS program or another government entity can obtain a CMAS contract by agreeing to provide goods or services on the same terms as a vendor that does have a multiple-award contract through the FMAS program or another government entity. These types of contracts, which comprise about 87 percent of all CMAS contracts, are commonly referred to as piggyback contracts because the available goods or services and corresponding prices are based on another entity's CMAS contract. CMAS contracts based on vendors' own FMAS contracts account for 12 percent of all CMAS contracts. The remaining 1 percent of CMAS contracts are based on vendors' own contracts with other state and local government entities.

Since its inception in 1994, the CMAS program has grown in both purchase dollars and the number of approved CMAS vendors. According to General Services, purchases through the CMAS program for fiscal year 2000–01 totaled $889 million, a 958 percent increase from the total for fiscal year 1994–95 of $84 million.

The number of vendors participating in the CMAS program rose from 121 in fiscal year 1994–95 to 2,352 by the end of fiscal year 2001–02, an increase of more than 1,800 percent.

Master Service Agreements

Master service agreements (MSAs) are contracts that General Services establishes with vendors to provide specified services (and some goods) to any state entity. General Services awards an MSA after conducting a bidding process so that each state entity does not need to go through the bidding process repeatedly for the same products or services. When more than one vendor is awarded an MSA to provide the same service, General Services may, depending on the nature of the MSA, prescribe a variety of procedures a department must follow to select the vendor it will use. For instance, one MSA requires the department to give the vendor offering the lowest price the first opportunity to accept an assignment. If this vendor cannot accept the assignment, the department must then offer it to the second lowest priced vendor. On another MSA, General Services prescribes no such steps. Several MSAs encourage, rather than require, departments to obtain and evaluate proposals from more than one vendor, explaining that the practice enables departments to obtain services at the best value and describing the specific steps involved.

Exceptions to Competitively Bid Procurements

State law allows for certain limited exceptions to the requirement that departments conduct a competitive bidding process for IT goods and services and non-IT goods: (1) when only one good or service can meet the State's needs and (2) when the good or service is needed because of an emergency—that is, when immediate acquisition is necessary for the protection of the public health, welfare, or safety. State law also allows General Services to determine the conditions under which a contract for non-IT services may be awarded without competition. General Services exercises this authority by making these determinations based on what is in the best interests of the State. Purchases that rely on these two exceptions are commonly known as sole-source contracts and emergency purchases, respectively. To ensure compliance with competitive bidding requirements, a noncompetitively bid procurement is authorized only when the requesting department can adequately document that one of the two exceptions exists. For the first five months of 2002, General Services reported 576 sole-source contracts totaling approximately $812 million and nine emergency purchases totaling approximately $9 million.

Sole-Source Contracts

On certain occasions, a department may need to contract with a specific vendor. This type of noncompetitively bid contract is referred to as a sole-source contract. The State Contracting Manual describes the conditions under which it is appropriate to issue sole-source contracts as well as those for which General Services' approval is required. Generally, before a department can establish a sole-source contract, it must show that there is no other vendor in the marketplace that can meet the State's needs.

Emergency Purchases

Emergency purchases use a single source, or provider. However, it is important to note that different criteria must be applied when justifying an emergency purchase than when justifying other types of sole-source contracts. When a department experiences an emergency involving public health, welfare, or safety and consequently needs to purchase supplies or equipment immediately, the department must justify that immediate need. Additionally, a department officer must approve the emergency purchase. The justification must demonstrate that the department could not have avoided the emergency condition by reasonable care and diligence or that there is an immediate threat of substantial damage or injury to persons committed to the department's care, to employees of the department, to members of the general public, or to property for which the department is responsible. General Services evaluates each emergency purchase request and either approves it or sends it back to the department for further review.

Proposed Purchasing Reforms

In April 2002, we issued an audit report criticizing the Oracle enterprise licensing agreement—the $95 million sole-source contract for 270,000 database licenses. Then, a month later, the governor issued an Executive Order creating the Governor's Task Force on Contracting and Procurement Review (task force). The mission of the task force was to review the State's contracting and procurement procedures and recommend any statutory, regulatory, or administrative changes necessary to ensure that departments use open and competitive bidding as much as possible before awarding state contracts. In addition, the task force was to recommend statutory or regulatory changes that would ensure adequate oversight of the procurement processes by state agencies and departments. Using a process that included meetings with state departments and a series of public forums held throughout the State, the task force completed its

directive from the governor in August 2002, recommending reforms that call for broad changes in the State's contracting and procurement procedures, including changes in the use of noncompetitively bid contracts and the CMAS program. Some of these recommendations can be implemented in less than a year, but the task force acknowledged that other recommendations will require more time to implement.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to audit the CMAS program and the State's sole-source contracting procedures. Specifically, the audit committee asked that we review the process used by General Services when establishing the CMAS vendors list and the procedures and practices used to identify qualified contractors and consultants when using noncompetitively bid and CMAS contracts to procure goods and services.

To understand whether General Services' administration of noncompetitively bid procurements and the CMAS program are in compliance with applicable criteria, we reviewed relevant state laws, rules, regulations, and General Services' policy and procedures manuals, and we interviewed staff at General Services. We also reviewed records of General Services' actions related to its administration of noncompetitively bid procurements and the CMAS program.

To determine whether departments have complied with existing laws, contracting procedures, and terms for CMAS contracts, we chose nine departments—the Health and Human Services Data Center, the Teale Data Center, the Department of Consumer Affairs, the Department of Corrections, the Department of Food and Agriculture, the Department of Justice, the Department of Motor Vehicles, the Department of Transportation, and the Office of Emergency Services—and selected a sample of CMAS purchase requests made by these state departments from January 1999 through September 2002. To assess how departments had been complying with General Services' previous CMAS procedures and whether departments were complying with the new guidelines, we evaluated our sample of CMAS purchases from the nine department based on two periods: before the governor issued his Executive Order on contracting practices in May 2002 and after the Executive Order was issued.

To determine whether adequate safeguards and controls are in place to protect state resources and to ensure that the State receives the best value for its purchases, we reviewed and assessed the procedures and practices departments use to choose the most qualified vendors from the CMAS list to purchase goods and services. Using the sample of CMAS purchases selected at each department we visited, we evaluated whether departments followed General Services' recommendations for determining which vendor represented the best value for that purchase. We also interviewed staff at each of the nine departments.

The audit committee specifically requested that we include CMAS and noncompetitively bid procurements from Oracle, Logicon, and David Lema and Associates in our sample. However, when reviewing the universe of sole-source contracts and CMAS purchases from which we selected our sample, we did not identify any significant transactions with these entities, with the exception of those purchases already addressed in our April 2002 report titled *Enterprise Licensing Agreement: The State Failed to Exercise Due Diligence When Contracting With Oracle, Potentially Costing Taxpayers Millions of Dollars*.

The audit committee also asked us to include in our review procurements relating to the state Web portal. To determine whether the State adhered to proper protocols when procuring goods and services for the Web portal, we interviewed officials with various state departments that directed portal activities and purchased goods and services for the portal. Although we attempted to interview the former directors of eGovernment and Executive Information Services, these individuals did not grant our requests. We reviewed documents related to the Web portal at General Services, the Teale Data Center, the Health and Human Services Data Center, and the Office of Planning and Research. Further, we reviewed vendor payment information at the State Controller's Office for vendors involved with the Web portal to determine the extent to which they sold goods and services to the State for the portal.

To assess whether the procedures and processes General Services uses to administer the CMAS program are consistent with best practices, we reviewed applicable studies and processes of the federal government, four other states, and an agency of one California county. We then compared General Services' current CMAS contracting process with the processes of these other

government entities, looking at several factors, including vendor qualifications, audits and reviews, and requirements for documenting purchases. Appendix A contains the results of this review.

To determine whether General Services adequately communicates with departments regarding the CMAS program, we reviewed the training materials General Services provides to departments and attended a CMAS training class. We also reviewed General Services' Web site for the CMAS program and surveyed the departments in our sample to obtain their assessments of General Services' efforts at communicating relevant CMAS information.

To determine how General Services establishes and maintains the list of CMAS vendors, we interviewed staff with this responsibility and reviewed the criteria General Services uses to determine vendor qualifications. In addition, we selected a sample of vendor applications to assess whether General Services follows its own criteria and procedures for adding vendors to the CMAS list. We also reviewed General Services' internal audit procedures to determine the adequacy of its periodic review of vendors. We then selected a sample of vendor reviews performed by General Services to determine the frequency of vendor reviews, whether General Services followed its audit procedures, and whether it monitored vendors and took corrective action when vendors did not comply with policies and procedures for CMAS contracts.

To determine the adequacy of the oversight General Services gives to departments awarding noncompetitively bid and emergency purchases, we reviewed the relevant laws, rules, regulations, and General Services' policy and procedures manuals to understand the criteria departments use to award noncompetitively bid and emergency procurements. We selected a sample of sole-source contracts and emergency purchases executed by departments to evaluate whether General Services ensured compliance with applicable legal requirements in its review and approval process. Finally, to determine whether departments have complied with the applicable legal requirements for noncompetitive bid contracts and emergency purchases, we reviewed the justifications provided by the departments. ■

CHAPTER 1

Departments Often Used the California Multiple Award Schedules Program to Purchase Goods and Services Without Comparing Prices or Determining Best Value

CHAPTER SUMMARY

Because the State spends billions of dollars each year procuring goods and services, departments must take reasonable steps to ensure that funds are well spent. According to the Department of General Services (General Services), state departments spent $889 million purchasing goods and services from vendors participating in the California Multiple Award Schedules (CMAS) program in fiscal year 2000–01. In its capacity as administrator and monitor of the CMAS program, General Services provides departments with guidance intended to ensure that the State receives the best possible price or value when purchasing goods and services from CMAS vendors. However, before May 2002, when an Executive Order called for sweeping reforms in the State's contracting and procurement practices, departments generally ignored the policies and procedures established by General Services.

In our review of purchases made by nine departments, we found several examples of departments using CMAS vendors without comparing prices among the program's vendors. For instance, the Department of Corrections (Corrections) made a $4.6 million purchase from a CMAS vendor for computer hardware maintenance services, but could provide no evidence that it compared that vendor's prices with those of other vendors or that the selected vendor's services represented the best value. In another example, four state entities made 20 CMAS purchases totaling $3.2 million from one vendor for the state Web portal—a single Web site from which California's citizens can access various state services. In making the purchases, the four state entities did not compare prices or otherwise determine whether the selected vendor provided the best value to the State.

State laws governing contracts and CMAS purchases are intended to eliminate favoritism and to provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound state fiscal practices. To ensure this, state laws and policies generally require departments to solicit competitive bids when contracting or when procuring goods or services. While departments often disregarded state purchasing policies and guidance before the May 2002 Executive Order, early indications are that departments are making improvement. However, because it is too early to tell how effectively the reforms prompted by the Executive Order are being implemented, doubt still exists about whether the State is paying fair and reasonable prices for goods and services.

DEPARTMENTS LARGELY IGNORED RECOMMENDED PROCEDURES FOR PURCHASING FROM CMAS VENDORS

Few departments took prudent steps, such as comparing prices, to ensure that they obtained the best value when acquiring goods and services from CMAS vendors. General Services had a process for the CMAS program that it assumed would result in fair and reasonable prices to the State. For example, in its policies and procedures manual, General Services recommended that departments compare prices among CMAS vendors before acquiring goods and services. General Services also stressed that an acquisition could be based on factors other than price, such as vendor service or quality of goods, as long as the acquisition represented the best value for the department. Departments were to document their decision-making process regarding best value in their files. Table 1 shows the extent to which departments ignored General Services' guidelines before the Executive Order issued on May 20, 2002, and the extent to which they have improved their purchasing practices since then.

Because a vendor does not directly compete against other CMAS vendors before being awarded a CMAS contract, departments will not necessarily obtain the best value simply by selecting CMAS vendors to provide goods or services. Among other things, prices and quality can vary from vendor to vendor. However, our review revealed that departments did not always take reasonable steps to ensure that they were receiving the best value when purchasing from CMAS vendors.

TABLE 1

Before the May 2002 Governor's Executive Order, Departments Did Not Consistently Compare Prices or Document Best Value for CMAS Purchases

Department	Governor's Executive Order	Compared Prices	Documented Best Value
Department of Corrections	Before	1 of 4*	1 of 4*
	After	2 of 3	2 of 3
Department of Food and Agriculture	Before	0 of 5	0 of 5
	After	1 of 1†	1 of 1†
Department of Consumer Affairs	Before	3 of 4‡	4 of 5
	After	3 of 3	3 of 3
Department of Justice	Before	2 of 5	2 of 5
	After	2 of 2§	3 of 3
Department of Motor Vehicles	Before	3 of 5	3 of 5
	After	3 of 3	3 of 3
Department of Transportation	Before	3 of 5	4 of 5
	After	3 of 3	3 of 3
Health and Human Services Data Center	Before	2 of 5	2 of 5
	After	3 of 3	3 of 3
Office of Emergency Services	Before	0 of 5	0 of 5
	After	2 of 3	2 of 3
Stephen P. Teale Data Center	Before	2 of 5	2 of 5
	After	3 of 3	3 of 3

* One purchase order was from a statewide contract; price comparison or best value documentation is not applicable.

† Only one purchase made through the CMAS program had been approved when we conducted our fieldwork.

‡ One purchase order we tested was for an expansion of an existing contract; price comparison is not applicable.

§ One purchase order was for a noncompetitvely bid contract; price comparison is not applicable.

We reviewed 44 CMAS purchases executed by nine departments before the Executive Order and found that the departments frequently either failed to compare prices of similar products offered through the CMAS program or did not document that they had based their selection on other factors, such as delivery time, vendor reputation, or warranties. For example, our review included five CMAS purchases made by the Office of Emergency Services (Emergency Services), and we found no evidence that

Departments did not compare prices or determine best value for CMAS purchases because they were not required to do so. Additionally, departments did not believe comparison shopping would result in more favorable prices.

it compared prices for any of the purchases. In one instance, Emergency Services purchased electronic components for $498,000 from one vendor without determining whether the amount paid represented the best available price or explaining why the items obtained from the selected vendor represented the best value for the department. Similarly, at Corrections, we reviewed four transactions and could not find evidence that price or other factors were considered for three of them. For instance, Corrections purchased computer hardware maintenance services totaling $4.6 million. General Services indicated that it had received information from Corrections that it had compared prices and service among various CMAS vendors. However, Corrections was not able to provide us with the documentation to confirm its statements to General Services.

Departments had three reasons for their failure to ensure that they acquire goods and services at the best value. First, although General Services *recommended* that departments compare prices among CMAS vendors, it did not *require* them to do so before May 2002. Second, several departments we surveyed indicated that they believed that CMAS vendors had already gone through a competitive evaluation process and thus comparison shopping would not result in more favorable prices. Third, state purchasing personnel stated that it was too difficult to obtain contracts or price lists from General Services or vendors, making comparing prices problematic. The Executive Order of May 20, 2002, and the subsequent recommendations made by the Governor's Task Force on Contracting and Procurement Review (task force) address these areas. The task force's recommendations are discussed in detail in Chapter 5 and Appendix B.

CMAS contracts were also used extensively to purchase hardware, software, and consulting services for the state Web portal. The purchases, made by at least four state entities, were often done at the direction of one or both of the former officials of the Governor's Office—the former directors of eGovernment and Executive Information Services. Similar to the CMAS purchases we reviewed at other departments, the four state entities, including two divisions within General Services, generally failed to adhere to CMAS purchasing practices recommended by General Services.

When Developing the Web Portal, State Entities Disregarded Recommended Protocols for Using the CMAS Program and Failed to Comply With the Terms of a Master Service Agreement

The state Web portal, also referred to as the California home page, is a multimillion-dollar project that facilitates access to the State's government services. In April 2000, the former officials of the Governor's Office proposed a major overhaul of California's existing home page to address perceived shortcomings. The redesigned Web portal would allow public access to information about vital state services through a central Web site. Additionally, the Web portal would enable state agencies and departments to integrate new and existing Internet applications into the Web portal's software and network applications.

The Teale Data Center, the Health and Human Services Data Center, and General Services failed to compare prices when purchasing $3.2 million in goods and services from one vendor for the Web portal.

The four state entities that purchased hardware and software components, maintenance, and consulting services for the Web portal—the Stephen P. Teale Data Center (Teale Data Center), the Health and Human Services Data Center, and General Services' Enterprise Business Office and Telecommunications Division—did not follow General Services' recommendations related to purchasing from CMAS vendors and failed to comply with the terms and conditions of a master service agreement (MSA). Specifically, these entities purchased $3.2 million in goods and services from one CMAS vendor and $8.4 million in consulting services from another vendor without comparing vendor prices or analyzing factors other than price, as recommended in the CMAS guidelines developed by General Services and the terms of the MSA. As a result, the State cannot ensure that the costs of some goods and services purchased for the Web portal were reasonable.

Departments Ignored Established Procedures When Purchasing Goods and Services From the StateStore Incorporated and Deloitte Consulting

Largely at the request of the former officials of the Governor's Office, two units within General Services along with two other state departments purchased more than $3.2 million in goods and services from the StateStore Incorporated (StateStore)—a private reseller of IT goods and services (see Table 2 on the following page).[1] With the exception of one purchase for $83,000, none of the departments compared prices or used any other

[1] The StateStore is a separate entity from CAL-Store, formerly known as the California State Computer Store, which is the name of a master purchase agreement.

means to determine that the StateStore provided the best value to the State, despite General Services' own recommended procedures. Similarly, largely at the request of the former officials, General Services and the Health and Human Services Data Center used an MSA and one CMAS purchase to obtain $8.4 million in services from Deloitte Consulting to act as the system integrator for the Web portal project. Although the terms of Deloitte Consulting's MSA stipulated that departments compare the cost of its consulting services with similar services provided by other vendors, the departments chose not to do so.

TABLE 2

For the State's Web Portal, Four Agencies Made 84 Purchases Worth $15 Million From August 2000 Through December 2002 (Dollars in Thousands)

	StateStore Incorporated		Deloitte Consulting		Other Vendors		Total	
State Department	Purchase Amount	Number of Purchases	Purchase Amount	Number of Purchases	Purchase Amount	Number of Purchases	Purchase Amount	Number of Purchases
Enterprise Business Office of the Department of General Services	$1,160	8	$7,530*	10	$ 10	3	$ 8,700	21
Telecommunications Division of the Department of General Services	40	1	980	3	100	2	1,120	6
Stephen P. Teale Data Center	1,810†	11	0	0	2,590	43	4,400	54
Health and Human Services Data Center	270	1	690‡	2	0	0	960	3
Totals	**$3,280**	**21**	**$9,200**	**15**	**$2,700**	**48**	**$15,180**	**84**

* The Enterprise Business Office made one purchase of $820,000 using an approved noncompetitively bid contract.

† One $83,000 purchase made after the May 2002 Executive Order did not involve the CMAS program; Teale Data Center obtained a comparative quote for this purchase.

‡ In one instance, the Health and Human Services Data Center used the CMAS program rather than an MSA to purchase $450,000 in services.

Between August 2000 and December 2002, General Services, the Teale Data Center, and the Health and Human Services Data Center made 36 purchases from the StateStore and Deloitte Consulting. Of those 36 purchases, 33 totaling $11.4 million were made at the direction of the former officials of the Governor's Office between August 2000 and April 2002. However, because the departments did not compare prices with those of similar goods and services available in the marketplace, the

State will never know whether the true cost of the Web portal—recently estimated by General Services and the Teale Data Center to exceed $20 million by the end of fiscal year 2004–05—represents the best value that could have been achieved if proper protocols were followed.

The StateStore's CMAS Contract Did Not Include Some Goods and Services Purchased for the Web Portal

General Services and the Teale Data Center inappropriately purchased items from the StateStore for the Web portal that were not included in the vendor's CMAS contract. Purchasing personnel in each department are responsible for ensuring that their departments purchase only the goods and services included in approved CMAS contracts.

Despite the requirements, in four instances, General Services purchased goods and services totaling more than $181,000 from the StateStore that were not in the StateStore's CMAS contract. For example, in June 2001, General Services purchased $21,000 in services from a StateStore subcontractor, Broadbase Software. Although as a subcontractor, Broadbase Software was included in the StateStore's CMAS contract, the services that General Services purchased were not covered under the contract. In another instance, General Services purchased $79,200 in Verity Software licenses. Again, Verity was a subcontractor included in the StateStore's CMAS contract, but the licenses that General Services purchased were not. Similarly, on three occasions, the Teale Data Center purchased goods and services totaling $509,000 from the StateStore that were not covered under the vendor's CMAS contract. In one instance, the Teale Data Center purchased software licenses from Broadvision—another subcontractor included in the StateStore's CMAS contract—for $400,000, but the specific type of license was not covered by the existing CMAS contract.

The Teale Data Center purchased goods and services totaling $509,000 that were not covered under the vendor's CMAS contract.

We identified additional instances of items purchased through the CMAS program that were not included in the CMAS contracts during our review of nine state departments. Specifically, three of the 44 purchase orders we reviewed contained at least one item that was not in the approved CMAS contract.

Recent Changes to CMAS Requirements Have Slowed but Not Halted Departments' Misuse of the CMAS Program

Because the May 20, 2002, Executive Order was only issued a few months before our fieldwork, it is too early to adequately assess its effect on the State's contracting and procurement activities. However, we found that although departments were more likely to obtain multiple price quotes from CMAS vendors during the months immediately following the Executive Order, two departments still did not consistently compare prices or adequately document their rationale for selecting a particular vendor. We reviewed 25 CMAS purchases made by nine departments after the date of the Executive Order and found that the departments did not obtain at least three price quotes in two instances. For example, Corrections purchased copiers and related equipment for $38,500. However, Corrections could provide no evidence that it had either solicited or obtained quotes from multiple vendors. Given the fiscal problems currently facing the State, it is essential that departments implement the new CMAS policies to ensure that they use state resources efficiently.

RECOMMENDATIONS

To ensure that the State receives the best value when acquiring goods and services, departments should take the following actions:

- Disseminate the reforms arising from the May 2002 Executive Order and the task force's recommendations to all departmental purchasing personnel. Additionally, departments should stress adherence to all CMAS purchasing requirements and reject requested purchases when the requirements are not met.

- Require department purchasing personnel to review the appropriate CMAS contract before approving any purchase request to ensure that the requested good or service is included in the contract. ■

CHAPTER 2

The Lack of Accountability for State Web Portal Project Purchases Resulted in Undisclosed Costs and Violations of State Policy

CHAPTER SUMMARY

The state Web portal, also referred to as the California home page, is a multimillion-dollar investment that makes California's government services accessible to the public through one central Web site. In fact, the California home page is a valuable tool and has received a number of awards recognizing its excellence. However, because multiple departments used the California Multiple Award Schedules (CMAS) program and a master service agreement (MSA) to develop, build, and maintain the Web portal, no source of accountability for project purchases was established.

As described in Chapter 1, the Web portal project involved a series of purchases made by four state entities: the Enterprise Business Office and the Telecommunications Division, both within the Department of General Services (General Services); the Stephen P. Teale Data Center (Teale Data Center); and the Health and Human Services Data Center. These departments made purchases largely at the direction of officials who were in the Governor's Office at the time (former officials of the Governor's Office). These officials received advice about the Web portal design and architecture from a Web council composed of officers from several large private businesses. In all, the design, implementation, and maintenance of the Web portal required at least 84 purchases from 20 vendors. The departments used the CMAS program and MSAs to make $12.7 million (84 percent) of the $15.2 million in purchases for the project from August 2000 through December 2002. Because these purchasing methods could be and were used without comparing products and prices, some vendors were denied the opportunity to compete for the Web portal business. Omitting competition creates the appearance that some companies may have had an unfair advantage in selling Web portal components to the project.

In addition, because officers of some companies were on the council that made recommendations and approved the design and architecture of the Web portal project, the fact that those companies later sold products to the State for the Web portal without their prices being compared with those of other vendors could lead to questions about the fairness of those purchases. Moreover, the State has little assurance that it paid fair and reasonable prices for the project. If a policy prohibiting the use of CMAS contracts for large-scale information technology (IT) projects (unless specifically approved as part of a feasibility study) had been in place and followed, the former officials of the Governor's Office or the four state entities that made purchases for the Web portal would have been precluded from using the CMAS program or MSAs for the project. The Governor's Task Force on Contracting and Procurement Review has recently recommended such a policy.

Using several departments to make purchases for a large-scale IT system such as the Web portal can easily result in a lack of adherence to established administrative and accounting controls and makes it more difficult to manage costs. The project received some review by the former Department of Information Technology (DOIT) and the Department of Finance (Finance). However, some modifications were made to the Web portal project that resulted in substantial increases in the cost of the project without General Services first obtaining the required approval from DOIT and Finance. In addition, General Services submitted one inaccurate report to DOIT, Finance, and the Legislative Analyst's Office (LAO) that omitted more than $1.3 million in Web portal costs. The LAO is the office responsible for analyzing budgetary issues and giving fiscal and policy advice to the Legislature. Because the former officials of the Governor's Office and General Services did not follow established IT controls and purchasing policies, there is less assurance that the State got the best value when making its sizable investment in the Web portal.

ALTHOUGH INITIATED BY THE GOVERNOR'S OFFICE, THE WEB PORTAL PROJECT BECAME THE RESPONSIBILITY OF GENERAL SERVICES

In spring 2000, the Governor's Office concluded that the California home page did not adequately serve the needs of the public. California citizens and others who used the home page could not access much of the information about services

provided by state departments. Additionally, the home page was cumbersome and did not include Web analysis tools to track user statistics or site performance. Responding to these problems, the Governor's Office submitted a feasibility study report to DOIT and Finance in April 2000 to propose a major overhaul of the home page.[2] The report discussed the need for a Web portal that would enable state agencies and departments to integrate new and existing Internet technologies into the Web portal's software and network applications. According to the feasibility study report, the development and maintenance costs for the Web portal would be $4.5 million over six years.

On September 8, 2000, the governor issued an Executive Order saying that the Governor's Office would work with both public and private sectors to establish a Web portal and directing state agencies and departments to integrate new and existing Web applications into the Web portal as much as possible. Also in September 2000, General Services assumed administrative responsibility for the Web portal project and subsequently submitted a revised feasibility study report to DOIT and Finance. DOIT and Finance discontinued review of the first feasibility study report and approved General Services' report; DOIT subsequently notified the Governor's Office of both actions. General Services' feasibility study report estimated the development and maintenance costs for the project at $5.1 million—an increase of $600,000 over the original feasibility study report.

Although General Services was the administrator of the Web portal project, two former officials of the Governor's Office directed much of the purchasing and decision making.

Although General Services became the administrator of the Web portal project, two former officials of the Governor's Office—the former directors of eGovernment and Executive Information Services—directed much of the purchasing and decision-making activities. As shown in Figure 1 on the following page, numerous business and state officials played a role in the Web portal project.

[2] A feasibility study report gives the business and technical reasons to justify investing state resources in an IT project, why the proposed project is needed, the means for ensuring its success, and a comprehensive analysis of its benefits and costs.

FIGURE 1

Numerous Private and State Entities Had Roles in Developing the State Web Portal

Web Council*
Hewlett-Packard
Verity Software
Broadvision
Broadbase Software (now Kana Software)
Interwoven
Subcontractor relationships on the CMAS contract held by the StateStore Incorporated (StateStore)†
The StateStore
Reseller with CMAS contract
Quotes
Governor's Office
Project sponsor and director
Negotiation of design, implementation, and maintenance purchases
Deloitte Consulting
System integration provider
The former officials of the Governor's Office provided departments with StateStore price quotes and Deloitte Consulting contract terms
Department of General Services Enterprise Business Office
• Made purchases
• Reimbursed other departments for certain purchases
Department of General Services Telecommunications Division
• Made purchases with own funds
• Loaned two employees to project
Health and Human Services Data Center
• Made purchases
Stephen P. Teale Data Center
• Made purchases
• Housed infrastructure
$
$
Reimbursements

* Additional Web Council members were Arcot Systems Inc., EDS, Ariba, Primus Corporation, and Sybase.

† The StateStore is a separate entity from CAL-Store, formerly known as the California State Computer Store, which is the name of a master purchase agreement.

THE STATE'S FAILURE TO COMPARE PRICES CREATED THE APPEARANCE THAT SOME COMPANIES MAY HAVE HAD AN UNFAIR ADVANTAGE IN SELLING WEB PORTAL COMPONENTS TO THE STATE

The governor's September 2000 Executive Order specified that the Governor's Office would consult with technology experts from the private sector, among others, to ensure that the Web portal adopted best practices. In fact, the Web portal was developed with guidance from a group of executives from several private businesses, some of which later sold products for the project. In a memorandum distributed by the Governor's Office in October 2000 to all state agency secretaries, department directors, and chief information officers, members of this group, called the Web Council, gave their "unanimous blessing to the portal's conceptual approach and its specific architecture."

Broadbase Software, Broadvision, and Hewlett-Packard—private companies that assisted with the conceptual design and specific architecture for the Web portal project—ultimately sold hardware and software components totaling $2.5 million without their prices being compared to other vendors.

According to the minutes and agendas from Web Council meetings, representatives of several companies participating in the council made presentations to discuss their companies' products. Three of these companies—Broadbase Software (now Kana Software), Broadvision, and Hewlett-Packard—ultimately sold hardware and software components to the State for the Web portal totaling $2.5 million. These companies sold their products to the State, either directly or indirectly through resellers with CMAS contracts, including the StateStore Incorporated (StateStore).[3] The concept of obtaining guidance from industry experts is meritorious if, after obtaining that guidance, the State engages in an open, competitive procurement process. In total, the State paid relatively little for the Web portal products sold by companies that were members of the Web Council compared with the total it paid to the company that provided system integration and maintenance for the Web portal without having their prices compared to those of other vendors. However, if obtaining advice from industry experts is followed by procurement of the industry experts' goods and services without comparing prices to those offered by others, as was the case with numerous CMAS purchases for the Web portal, an appearance of unfairness is created.

We contacted the former officials of the Governor's Office who were responsible for coordinating Web portal activities to determine how the Web Council members were selected. However, they did not grant our requests for interviews.

[3] The StateStore is a separate entity from CAL-Store, formerly known as the California State Computer Store, which is the name of a master purchase agreement.

Former officials of the Governor's Office, wanting to avoid the lengthy competitive bidding process, elected to use CMAS and a master service agreement for purchases for the Web portal project.

In the week following the issuance of the September 2000 Executive Order, General Services' senior staff counsel attended a meeting with the former officials of the Governor's Office and the acquisitions manager at General Services at that time to discuss the possible procurement methods that would enable Web portal purchases to be made without a lengthy bidding process. According to the former chief of General Services' Enterprise Business Office, the former officials of the Governor's Office indicated that certain phases of the Web portal needed to be completed by early January 2001. A lengthy competitive bidding process would have hampered their ability to meet that deadline. Therefore, it was ultimately decided that using one or more of the State's available procurement processes that did not require solicitation and evaluation of competitive bids, specifically CMAS contracts and MSAs, would make meeting the deadline possible.

General Services' senior staff counsel stated that one of the former officials of the Governor's Office selected the StateStore and Deloitte Consulting to provide the bulk of the goods and services for the Web portal project. It was not clear how the former official selected these two vendors. To determine how the StateStore and Deloitte Consulting were selected, we attempted to meet with the former officials, but they did not grant our requests for interviews.

As discussed in Chapter 1, the State made more than $3.2 million in purchases from the StateStore for goods and services for the Web portal project. The StateStore is a reseller with a CMAS contract through which it sold the services and products of subcontractors to the State for the Web portal project. These subcontractors included Broadbase Software, Broadvision, Interwoven, and Verity Software.

In addition, General Services and the Health and Human Services Data Center issued a total of 13 purchase orders to Deloitte Consulting totaling $7.9 million based on the vendor's MSA contract. Deloitte Consulting was the main consultant on the Web portal project and was responsible for the design and integration of the Web portal. The consulting firm continues to provide maintenance services for the Web portal. We could find no evidence that the former officials of the Governor's Office or the departments that made the actual purchases compared the prices of products and services provided by the StateStore and Deloitte Consulting with those of other vendors offering similar

In spite of guidance to the contrary, the Health and Human Services Data Center and General Services purchased $7.9 million in consulting services using an MSA with Deloitte Consulting without comparing prices to those of similar services provided by other vendors.

goods and services, contrary to the guidance given by General Services. Therefore, there is little assurance that the prices were fair and reasonable and represented the best value to the State.

GENERAL SERVICES AND FORMER OFFICIALS OF THE GOVERNOR'S OFFICE DID NOT FOLLOW STATE POLICY GOVERNING INFORMATION TECHNOLOGY PROJECTS

At the direction of the former director of eGovernment, costly modifications were made to the Web portal project before General Services obtained approval from DOIT and Finance. Further, General Services submitted one inaccurate report to DOIT and Finance that omitted more than $1.3 million in Web portal costs. Because unauthorized modifications were made and inaccurate cost estimates submitted, DOIT and Finance could not accurately assess whether the modifications and associated costs were in the best interest of the State. We were also unable to determine if the officials at General Services who approved previous Web portal project reports had authorized an unsigned special project report that was submitted to DOIT, Finance, and the LAO. The unsigned special project report included cost estimates that were nearly double those that had been included in a previous special project report approved by the officials of General Services. According to officials at Finance, they met with one of the former officials from the Governor's Office and representatives from General Services to discuss the proposed cost increases. Subsequent to this meeting, Finance approved the unsigned project report. Finally, General Services also submitted some incorrect cost estimates to the LAO. Consequently, the Legislature did not have accurate information on the costs of the Web portal.

General Services Lacked Control Over the Web Portal Project

General Services did not adequately coordinate and monitor Web portal purchasing and reporting activities. As a result, the special project reports submitted to DOIT, Finance, and the LAO did not accurately account for all Web portal purchases. Moreover, it appears that responsible officials at General Services were unaware that a revised Web portal project report had been submitted to DOIT, Finance, and the LAO reflecting a significant increase in total project costs.

A decentralized purchasing method—with the former officials of the Governor's Office directing purchases made by several state entities—made it difficult for General Services to account for all Web portal activities.

It was difficult for General Services, the department responsible for monitoring the budget and tracking expenditures for the Web portal, to manage the project because many portal purchases were made at the direction of the former officials of the Governor's Office. Several state entities, including the Enterprise Business Office, General Services' Telecommunications Division, the Teale Data Center, and the Health and Human Services Data Center, purchased goods and services for the project largely at the direction of the former officials. This decentralized purchasing method made it difficult for the Enterprise Business Office to account for all Web portal activities.

In addition, it appears that General Services' former chief information officer did not approve the unsigned special project report submitted to DOIT and Finance on or about January 5, 2001. The unsigned report modified the November 2000 special project report, which estimated total Web portal costs at $6.8 million through fiscal year 2005–06. General Services' former director, budget officer, and former chief information officer had approved the initial feasibility study report and the November 2000 special project report. However, none of these individuals signed the report dated January 5, 2001, which nearly doubled the estimated cost of the project to $13.5 million. State policy requires the department director or the director's designee to sign all special project reports. Additionally, the unsigned January 2001 report provided no explanation for the significant increase in project costs. In fact, with the exception of a spreadsheet that showed the revised cost estimates, the unsigned report was virtually identical to the November 2000 special project report.

According to information provided by Finance, it appears that the unsigned special project report was prepared by staff at the Employment Development Department (EDD) following a meeting between Finance officials, a former Governor's Office official, and representatives from General Services to discuss, among other things, the increase in estimated Web portal project costs. According to officials at Finance, it is not uncommon for minor modifications to be made to a special project report after it has been submitted for approval. Such modifications generally are made to address questions or concerns raised by DOIT and Finance during their review. Moreover, according to Finance officials, such modifications do not always require formal approval on a signed cover sheet by the department's director, budget officer, and chief information officer—the individuals who must approve special project reports. If department budget staff are involved in making the

modifications, Finance officials assume that the department's staff have either been delegated the authority to act on behalf of the department's responsible officials or have kept them informed and have obtained their concurrence. Finance officials could not tell us whether the increase in the Web portal project's estimated costs were initiated by General Services, the former officials at the Governor's Office, DOIT, or Finance. However, we believe that changes to a project that effectively double the estimated cost of the project do not constitute minor modifications.

Finance is responsible for determining whether departments have adequately justified the business needs for the original IT projects and any significant changes to ongoing projects. In other words, Finance's responsibility is to ensure that IT expenditures represent a prudent use of state resources. However, as previously discussed, the unsigned project report provided virtually no explanation for the significant increase in project costs. Moreover, Finance could not provide any documentation of its analysis of the proposed project changes to the November 2000 special project report and resulting cost increase. Finance stated that it would have preferred more complete cost information. However, it approved submitting the revised estimates to the Legislature based on available information, given the high priority of the project. The January 2001 report was delivered to the LAO in March 2001.

DOIT also issued an approval letter to General Services; however, because it lacked specificity, we were unable to determine from the letter which project report it approved.

Changes to the Web Portal Were Implemented Before Approval Was Sought

Changes that increased previously approved costs by 94 percent were made at the direction of a former official of the Governor's Office without the approval of DOIT and Finance.

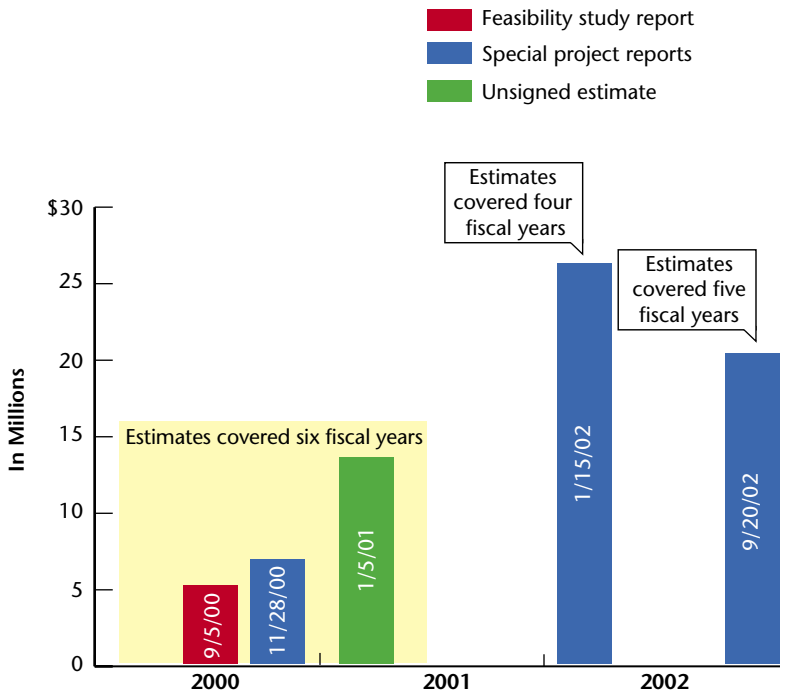
General Services failed to obtain the necessary approvals from DOIT and Finance before significant changes were made to the Web portal project. The changes, which increased previously approved project costs by 94 percent, were made at the direction of one of the former officials of the Governor's Office—the former director of eGovernment. Among the changes were significant enhancements related to the energy crisis and terrorist threats and ongoing system maintenance provided by consultants rather than state personnel, as was originally planned.

As shown in Figure 2 on the following page, in its original feasibility study report, General Services estimated the total cost of the Web portal at $5.1 million. General Services subsequently

submitted a special project report on November 28, 2000. At the time the Web portal was being developed, state policy required a department to submit a special project report to DOIT, Finance, and the LAO if the total cost of an IT project deviated or was anticipated to deviate by more than 10 percent from the previously approved cost estimate. The department should not implement any changes to the IT projects until DOIT and Finance approved the special project report. Further, the policy also required the department to explain the reason for the project deviation. The explanation had to include sufficient information for agency management, administrative control agencies, and the Legislature to assess the merits of any project change. In the special project report of November 28, 2000, General Services estimated the Web portal costs to be $6.8 million—an increase of $1.7 million (32 percent) over the original estimate. However, the explanation of the cost increase included in the special project report was limited to general statements about expanding and upgrading the system to meet demands and did not identify the specific modifications or enhancements that caused the cost variance.

FIGURE 2

Web Portal Project Cost Estimates Increased Dramatically Between September 2000 and 2002



On January 15, 2002, General Services submitted a special project report further increasing the cost of the Web portal to $26.2 million. While the report included an explanation for the increased cost, it was not submitted until after the project enhancements had been made. The special project report specifically identified four enhancements related to the energy crisis and concerns about possible terrorist threats prompted by the attacks on September 11, 2001, that would add $9.2 million to the total cost of the project. However, according to the special project report, the enhancements made in response to the energy crisis and terrorism concerns were completed four to six months before General Services submitted the report. For example, the enhancements developed in response to the energy crisis, which were projected to cost $8 million, were completed in August 2001. To its credit, in a March 2002 letter, DOIT informed the former director of General Services that it would not issue an approval letter for the project changes. DOIT also reminded General Services of the state policy requiring departments to obtain DOIT and Finance approval of significant proposed changes before engaging in those activities.

We also question the validity of information General Services included in its special project reports. For example, in its November 28, 2000, special project report, General Services indicated that state personnel would be responsible for all continuing costs associated with the project, which presumably would include maintenance of the Web portal. However, on January 29, 2001, General Services issued a purchase order for $980,000 in services from Deloitte Consulting to maintain the Web portal. Because this action represented a change in project approach, General Services should have submitted a special project report within 30 days of anticipating a change in approach and obtained prior approval from DOIT and Finance. However, it failed to do so.

In fact, General Services did not acknowledge using a contractor to provide maintenance services until January 15, 2002, when it submitted its second special project report. By that time, General Services and the Health and Human Services Data Center had already paid Deloitte Consulting $5.7 million and had committed the State to paying the company another $2.6 million. Moreover, in the January 2002 special project report, General Services reported that it had contracted with Deloitte Consulting for only $5.2 million. It is critical that departments provide current and accurate information in their IT project reports so that administrative control agencies and the Legislature can make informed decisions regarding the future direction of IT projects.

Web Portal Project Reports Were Inaccurate Because They Failed to Include Some Actual and Projected Costs

At least one special project report that General Services submitted for the Web portal project was inaccurate because it did not include more than $1.3 million in Web portal costs incurred by its Telecommunications Division and the Health and Human Services Data Center. Furthermore, we believe the cost estimates included in the final two special project reports could be misinterpreted because the number of years of future maintenance they associated with the project was not the same as the number of years given in previous estimates.

A former EDD employee prepared the feasibility and special project reports for the Web portal project. She told us that the former officials of the Governor's Office and an analyst in the Governor's Office provided her with all the information necessary to prepare the feasibility study reports and the November 2000 special project report. It was not until later, around September 2001, that she began getting information from the former chief of General Services' Enterprise Business Office to prepare the January 2002 special project report. We do not know how the former officials arrived at the estimates seen in the feasibility study report and the November 2000 special project report.

According to the former chief of General Services' Enterprise Business Office, who dispersed and tracked most Web portal payments, certain costs incurred by the Telecommunications Division and the Health and Human Service Data Center were not included in the special project reports because those entities were not reimbursed for portal-related purchases. Former officials of the Governor's Office directed the Telecommunications Division to purchase $1.1 million in consulting services and software for the Web portal, none of which was reimbursed by the Enterprise Business Office. The Health and Human Services Data Center, in consultation with the former officials of the Governor's Office, used its own funds to purchase $250,000 in services related to the Web portal from Deloitte Consulting.

The former chief of the Enterprise Business Office explained that a lack of adequate funding was a problem and that one of the former officials, the former director of eGovernment, looked for "creative" ways to fund the project. For example, according to a former Telecommunications Division official, the former director of eGovernment asked her to purchase consulting services for the Web portal to help ensure that the project was

Web portal project costs of $1.3 million were not included in special project reports submitted to DOIT, Finance, and the LAO.

completed by January 2001. The former Telecommunications Division official stated that the purchases were made from the division's budgets for consulting services and training. An official from the Telecommunications Division Support Services Section stated that the costs were recovered through service fees charged to state departments for the State's telephone network. Because the former chief of the Enterprise Business Office only communicated costs that were under her control to the individual preparing the January 2002 special project report, the total Web portal project estimates submitted to DOIT, Finance, and the LAO in that report were understated by at least $1.3 million.

Further, it appears that the two most recent special project reports understated estimates for future years' costs because they did not recognize any continuing costs through fiscal year 2005–06. Specifically, General Services' original feasibility study report and first special project report included continuing costs through fiscal year 2005–06, but the special project report dated January 15, 2002, did not show any costs for fiscal years 2004–05 and 2005–06. Similarly, the most recent special project report, dated September 20, 2002, did not include any costs for fiscal year 2005–06 in its estimated total project costs of $20.3 million.

We believe, as apparently General Services did in its November 28, 2000, special project report, that it is reasonable to assume that the State will incur some ongoing costs, most likely associated with system maintenance, for the Web portal during fiscal year 2005–06. Because General Services and the Teale Data Center stopped reporting estimated costs for fiscal year 2005–06 in their special project reports, anyone comparing the total estimated Web portal costs from one special report to another might be misled. Based on the most recent estimate of continuing costs of roughly $3 million annually for fiscal years 2002–03 through 2004–05, we believe General Services should have reported a similar amount for fiscal year 2005–06. If the September 2002 special project report had been adjusted to reflect continuing maintenance costs through fiscal year 2005–06, the total project costs would have been reported as $23.3 million rather than the $20.3 million actually reported. At a minimum, the change in reporting period should have been disclosed.

THE USE OF MULTIPLE DEPARTMENTS TO MAKE PURCHASES FOR THE WEB PORTAL RESULTED IN PAYMENTS FOR SOME SERVICES THAT WERE REQUIRED UNDER EARLIER AGREEMENTS

Several departments made Web portal purchases rather than one office coordinating and making all purchases. Consequently, no one office carefully tracked existing purchases and compared them to newly requested purchases, and the State contracted for some services even though the same services had already been required under earlier agreements. For example, on March 26, 2001, General Services' Telecommunications Division issued a $173,000 purchase order to Deloitte Consulting for project management of ongoing operations and maintenance support of the Web portal. The terms and services of this 33-day contract duplicated some of the terms and services of another purchase order that General Services' Enterprise Business Office issued on January 29, 2001, to Deloitte Consulting.

According to the former chief of the Telecommunications Division's Network Services, she was unaware of the Enterprise Business Office's purchase and therefore did not compare the statements of work. Likewise, the former chief of the Enterprise Business Office stated that because she was not aware at the time that the Telecommunications Division was making purchases for the Web portal, she did not attempt to compare Enterprise Business Office purchases with any Telecommunications Division purchases. The former chief of Network Services explained that the former officials of the Governor's Office worked out the details of the purchases with Deloitte Consulting, and she did not feel obligated to scrutinize the particulars of the contracts because she trusted that the former officials were following the necessary processes.

Similarly, in May 2001, the Health and Human Services Data Center entered into an agreement with Deloitte Consulting to create a plan to develop a Web portal mirror site at the Health and Human Services Data Center. At a cost of $246,000, the mirror site would help ensure continuous operation of the Web portal in case of a disaster that might incapacitate the original site at the Teale Data Center. In reviewing the three reports that Deloitte Consulting submitted in fulfillment of its agreement with the Health and Human Services Data Center, we found that the content of the reports was information Deloitte Consulting was already obligated to provide under earlier contracts with the Enterprise Business Office.

Much of the content of reports submitted by Deloitte Consulting in fulfillment of its agreement with the Health and Human Services Data Center was already covered by earlier contracts between the consulting firm and the Enterprise Business Office.

In addition, the three reports that Deloitte Consulting submitted to the Health and Human Services Data Center did not specifically address the stated purpose of the agreement. For example, two of the reports did not specifically address establishing the Health and Human Services Data Center as a mirror site. We also found that five of the nine pages that made up the third report were exact duplicates of pages in a document the Enterprise Business Office paid Deloitte Consulting to prepare. The bulk of the remaining four pages consisted of statements, graphics, and tables generally describing phases of designing and implementing a disaster recovery site, not specifically developing the Health and Human Services Data Center into a mirror site for the Web portal. Indeed, the report text indicated that it was intended as a discussion document and said that the Health and Human Services Data Center was unlikely to be a long-term disaster recovery solution for the State due to its geographic proximity to the Teale Data Center. This kind of high-level observation could have been made under Deloitte Consulting's maintenance agreements with the Enterprise Business Office and the Telecommunications Division, which required Deloitte Consulting to provide advice on disaster recovery for the Web portal.

Although the Health and Human Services Data Center reviewed and accepted Deloitte Consulting's three reports, it would not have known about the consulting firm's other agreements covering some of the same services unless it had access to purchase orders issued by General Services' Enterprise Business Office and Telecommunications Division and compared the terms and conditions. In addition, the Health and Human Services Data Center paid Deloitte Consulting for its services under the contract before receiving the required deliverables. The Health and Human Services Data Center employee who approved payment to Deloitte Consulting before receiving and reviewing the reports explained that he did so based on assurances given to him by one of the former officials of the Governor's Office that the reports had been delivered to and accepted by the former officials. Accepting and paying for contract deliverables in this manner reduces assurances that the State is paying for services actually received.

These questionable purchases illustrate the danger of having multiple departments making purchases for a single project but not communicating with each other. In this type of environment, authority and accountability lines become vague, the chance of error increases, and the State has less assurance that its

resources are being spent wisely. We requested interviews with the former officials of the Governor's Office to determine why they used multiple departments to make purchases for the Web portal project. However, these former officials did not grant our requests for interviews.

RECENT ACTIONS BY GENERAL SERVICES AND THE TEALE DATA CENTER HAVE REDUCED WEB PORTAL MAINTENANCE COSTS

As shown in Figure 2 on page 34, the most recent special project report estimated the total cost of the Web portal project at nearly $6 million less than the January 2002 estimate. General Services and the Teale Data Center jointly submitted the September 2002 special project report after completing cutbacks in Web portal maintenance that included a major reduction in the number of hours for Deloitte Consulting to maintain the Web portal.

On June 12, 2002, the interim director of DOIT said that although Deloitte Consulting's work product had apparently been exemplary, its Web portal agreements were expensive, and little had been done to transfer the consulting firm's expertise to state employees so that the Web portal could ultimately be operated by a state agency. He recommended that General Services extend Deloitte Consulting's Web portal maintenance agreement until a competitively selected contractor became available. However, he also recommended reducing the size of the agreement by restricting Deloitte Consulting's role to limited maintenance and knowledge transfer functions, ultimately turning over the maintenance of the Web portal to state employees.

Armed with these recommendations, General Services entered an $820,000 noncompetitively bid contract with Deloitte Consulting to maintain the Web portal for six months starting July 1, 2002, and ending December 31, 2002. The new contract limited Deloitte Consulting's maintenance activities to normal work hours, whereas in previous maintenance agreements, Deloitte Consulting ensured portal operations 24 hours a day, seven days a week. In addition, the new contract did not require Deloitte Consulting to maintain certain components of the Web portal because they had been eliminated from the portal architecture to reduce continuing costs. The reduction in Deloitte Consulting's maintenance activities allowed General Services to substantially reduce the number of consulting hours used to maintain the Web portal.

When General Services' noncompetitively bid contract with Deloitte Consulting ended on December 31, 2002, state employees apparently were not yet prepared to maintain all aspects of the Web portal. Therefore, the Teale Data Center entered another six-month contract with Deloitte Consulting for $350,000 in Web portal maintenance. Unlike the manner in which previous maintenance contracts had been established, however, the Teale Data Center solicited proposals from more than 20 different companies to perform maintenance for the Web portal, and six firms responded. The Teale Data Center evaluated the responses and eventually chose Deloitte Consulting, achieving significant reductions in the hourly rate over previous Deloitte Consulting agreements. Indeed, the Teale Data Center achieved a 39 percent average reduction in Deloitte Consulting's hourly rates from the hourly rates paid on earlier, noncompetitively bid contracts.

Using competitive bidding, the Teale Data Center achieved a 39 percent average reduction in Deloitte Consulting's hourly rates.

By using a competitive bidding process to award its Web portal maintenance contract with Deloitte Consulting, the Teale Data Center achieved cost savings and entered a contract that used state resources advantageously. If General Services had gone through the same process for earlier Deloitte Consulting purchases, the State would have more assurance that its Web portal investment was reasonable and represented the best value to the State. Further, if General Services had gone through the competitive process for all the products and services associated with implementing and maintaining the Web portal, the State may have paid less for the Web portal than it did.

RECOMMENDATIONS

In the September 2002 special project report, General Services transferred responsibility for providing management, maintenance, and support for the Web portal project to the Teale Data Center. With that responsibility, the Teale Data Center should take the following actions to ensure that the State's investment in the Web portal is a prudent use of taxpayer resources:

- Continue to use the competitive bidding process for purchasing goods and services for the project.

- Monitor project expenses by recording estimated costs when contracts and purchase orders are initiated and actual costs when they are paid.

- Submit special project reports to Finance and the LAO[4] when required, and ensure that reported costs accurately reflect actual expenditures and commitments to date.

- Make certain that special project reports contain estimates for at least the same number of years that earlier reports covered (fiscal years 2000–01 through 2005–06) so that reviewers can easily identify changes in the overall projected cost.

To ensure that the State has not paid for goods or services twice, General Services should review past payments to Deloitte Consulting and the StateStore by General Services, the Health and Human Services Data Center, and the Teale Data Center. If duplicate payments were made, General Services should recover them. ■

[4] DOIT ceased to exist in July 2002. As of September 2002, state departments are required to submit feasibility study reports and special project reports only to Finance and the LAO.

CHAPTER 3

By Strengthening Its Review Processes, General Services Could Reduce Departments' Misuses of Sole-Source Contracts and Emergency Purchases

CHAPTER SUMMARY

Before the May 2002 Executive Order, state departments often did not adequately justify the need for sole-source contracts. Requests for sole-source contracts were often ambiguous or failed to demonstrate that the contracted good or service was the only one that could meet the State's needs. In addition, because they failed to make sufficient plans for certain purchases, departments often used sole-source contracts inappropriately. Similarly, departments frequently misused the State's emergency purchasing process by failing to demonstrate that they met the legal requirements for this type of procurement. To exacerbate the problem, the Department of General Services (General Services) approved requests for millions of dollars in questionable sole-source contracts and emergency purchases.

State law allows a department to purchase information technology (IT) goods and services and non-IT goods without competitive bidding if the department and General Services agree that there is only one good or service that can meet the State's needs. State law does not directly grant this exception for non-IT service contracts but gives the director of General Services broad discretion to determine the circumstances under which non-IT service contracts can be awarded without competitive bidding. General Services makes the determination of whether to permit a noncompetitive, non-IT service contract based on what it considers to be in the best interests of the State. A contract established using this exception is commonly known as a sole-source contract. The second exception to the requirement to engage in competitive bidding that is allowed by law is for a purchase that must be made immediately for the protection of the public health, welfare, or safety. An acquisition made on the basis of this exception is called an emergency purchase.

General Services refers to sole-source contracts and emergency purchases as noncompetitively bid contracts. Although an emergency purchase is, in fact, a contract that uses a single source or provider, it is important to note that an emergency contract and a sole-source contract are two distinct kinds of contracts that must be justified using criteria specific to each type of contract.

STATE DEPARTMENTS IMPROPERLY USED SOLE-SOURCE CONTRACTS TO OBTAIN GOODS AND SERVICES

General Services approved eight of 23 sole-source contract requests we reviewed even though the requests did not sufficiently justify the use of sole-source contracts.

We reviewed 23 requests for sole-source contract approval submitted by various state departments and identified eight examples of departmental misuse of this type of exception. General Services, however, approved all 23 requests. In four requests that General Services approved, the departments failed to provide the kind or degree of justification we expected to see. We could not determine whether the circumstances warranted a sole-source contract for one of the 23 requests because the department's justification was ambiguous. Specifically, the justification did not clearly demonstrate what efforts were taken to identify other potential sources or why the procurement was restricted to only one source. Finally, in three of the 23 sole-source requests we reviewed, the departments sought the contracts because they did not have sufficient time to acquire the goods or services through the normal competitive bidding process. However, we believe the departments had enough information well in advance of the procurement but failed to properly plan for the acquisition.

Requirements for a Valid Sole-Source Contract

Because both state law and public policy strongly favor competitive bidding, General Services must be judicious when granting exceptions that allow sole-source contracts. To enter a sole-source contract, the department proposing the purchase must provide General Services with a statement justifying the need to establish the sole-source contract. Simply stating that one provider has a superior good or service is not adequate justification for a sole-source contract; rather, the department proposing the purchase must demonstrate that only that good or service will meet the State's needs.

The State Administrative Manual (SAM) provides guidance to assist departments in evaluating whether a sole-source contract is justified. For non-IT contracts for goods, the SAM requires the purchasing department to show at least the following:

- The unique performance factors of the product.
- Why the department requires the product's unique factors.
- The other products that the department has examined and rejected and why.

The SAM also provides similar guidelines for purchasing repair parts and additional pieces designed to function with existing equipment. For IT goods and service contracts, the SAM gives the following examples of situations that may meet the criteria for a sole-source contract:

- A survey of the marketplace shows there is only one vendor that can provide the service or article. The department should document the companies contacted, the dates of contact, and the price quote of the single vendor able to provide the service or article.
- Only a single make or model of hardware or software is capable of interfacing and operating within the department's existing IT environment.
- The purchase consists of either added units that must match an existing system or currently leased equipment, provided the original contract contained a purchase option.
- The purchase or lease comprises proprietary software available from only one source. Limited competition is appropriate if there are multiple distributors.
- A maintenance service contract is needed to meet specific sole-source criteria.

The SAM guidelines are designed to ensure that the purchasing department shows not only that the proposed item or brand name uniquely serves its needs but also that the department has attempted to determine whether there are, in fact, other providers that offer the item or brand name. To justify a sole-source purchase, a department must complete a Contract Advertising Exemption Request as well as a sole-source questionnaire. The questionnaire requires the purchasing department to answer,

among other things, why only one vendor can provide the good or service, the consequence of not making the purchase, and how the price was determined to be fair and reasonable.

Departments Frequently Sought Approval of Sole-Source Contracts That Did Not Include Adequate Justification

In four of the 23 sole-source contract requests we reviewed, the departments clearly did not provide the justification we expected, yet they received approval for the contracts. Specifically, three of the four departments did not document the steps they had taken to determine whether other providers of the good or service existed and none of the four described why the uniqueness of the good or service limited the acquisition to one vendor. Most often, the justification was limited to a discussion of the vendor's experience or the superiority of that vendor's good or service.

Information required for approval of sole-source contract requests:

- Why the acquisition is restricted to one supplier.
- The background of events leading to the acquisition.
- The uniqueness of the acquisition; why the good, service, and/or supplier was chosen.
- The consequences of not purchasing the good, service, and/or supplier.
- The market research conducted to substantiate the sole source, including evaluation of other items considered.
- How the price offered was determined to be fair and reasonable.
- The cost savings realized or costs avoided by acquiring the good or service from the supplier.

For example, the State Water Resources Control Board (State Water Board) requested approval for a $490,000 sole-source contract to obtain technical expertise related to the electronic submission of laboratory reports. In its June 7, 2001, sole-source request, the State Water Board's justification stated that time was of the essence because legislation required the electronic submission of data by September 1, 2001. Contrary to the State Water Board's assertion that legislation required the electronic submission of data by September 1, 2001, the requirement was established by the State Water Board itself in its emergency regulations that it issued in response to the legislation. The legislation required the State Water Board to adopt emergency regulations that would implement this statewide program for electronic reporting by March 1, 2001, and to report to the Legislature on certain aspects of the implementation of the system by January 1, 2003.

As a result of the short timeframe, the justification indicated that the contractor's services were required for immediate planning, management, and implementation issues. The justification provided by the State Water Board also stated that the law specified a particular electronic format for submitting the laboratory reports and that the contractor was the only one providing the service required for that format.

It may be the case that the short timeframe within which the State Water Board had to adopt emergency regulations and make this system operational so that it could provide a timely report to the Legislature by January 1, 2003, reasonably led the State Water Board to believe that there was only one provider who could meet the State's needs within that limited timeframe. However, we question the sufficiency of the justification provided by the State Water Board. Although the justification indicated that the chosen contractor was the only one providing the service required for the format, nothing in the justification demonstrates what kind of market survey the State Water Board did to make this determination.

In another instance, the Department of Fish and Game (Fish and Game) requested approval for a $17.1 million sole-source contract to develop and maintain an online database supporting point-of-sale terminals for hunting and fishing licenses and permits. However, based on a vendor survey conducted by Fish and Game, there were at least two other vendors that could have designed a system that would meet its needs. While the selected vendor may have been able to perform the service, it is difficult to understand how Fish and Game concluded that it was the only vendor that could meet the State's needs given the results of its own vendor survey. Although General Services approved the sole-source request, it appears Finance stopped the purchase on the basis that it should be competitively bid. Fish and Game canceled the contract and is now competitively procuring the database. We agree with Finance's decision to intercede in the request for a sole-source contract. However, General Services is the department responsible for procurement and should have identified as invalid Fish and Game's sole-source request.

We also question whether General Services had enough information to assess the validity of one department's assertions and whether the statements adequately justified the approval of a sole-source contract. For example, in 1997 the California Highway Patrol (CHP) sought approval of a five-year, $5 million sole-source contract with Level II Incorporated for software support and expansion of the CHP's computer-aided dispatch system. The sole-source request indicated that using Level II could result in cost savings over continuing to use the consulting firm that was providing support services at the time. While the justification indicates that Level II is the provider of proprietary software, the fact that a consulting firm provided maintenance implies that vendors other than Level II might be equally capable of providing the

requested services. To review sole-source requests for IT contracts like the CHP's, we obtained the services of an IT consultant. In this case, our IT consultant noted that the original contractor, in its role as system integrator, might have subcontracted the previous work to Level II and was not providing the actual maintenance or software for the dispatch system. Additionally, our consultant reasoned that the dispatch system might have been proprietary, making it necessary to retain the services of Level II to develop new systems consistent with the existing one. However, the CHP did not specifically state in its sole-source request that the dispatch system was proprietary or that Level II was the only vendor that could provide needed hardware, software, and maintenance services because of factors such as compatibility, licensing, and warranty concerns. Moreover, nothing in the materials suggested that the CHP conducted any marketplace research to determine whether any other supplier might have provided the support services. Based on his understanding of the requirements for sole-source contracts, our consultant concluded that General Services would have needed additional information to determine the adequacy of these justifications. Later, in November 2002, when the CHP wanted to extend the term of its sole-source contract with Level II, it included in its justification the kind of detailed information we expect to see when claiming that a vendor is the only one that can meet the State's needs.

Because Departments Failed to Properly Plan Some Procurements, They Requested Sole-Source Contracts to Obtain Goods or Services Quickly

Departments occasionally leave themselves no alternative but to rely on a noncompetitive form of procurement because they have not adequately anticipated their procurement needs. We observed three instances when departments sought approval of a sole-source contract, not because there was no other vendor that could meet the State's needs, but because poor planning necessitated an alternative to a competitive bidding process. One example of poor planning concerns the acquisition of pay-phone services for state and local government entities. In January 2002, General Services' Telecommunications Division requested approval of two sole-source contracts with MCI WorldCom and Verizon for a three-year period from February 1, 2002, through February 1, 2005, with options for a fourth year. The contracts were designed to provide continuous pay-phone service to inmates in the State's prison

system and other government buildings. According to the Telecommunications Division's sole-source justification, until August 18, 1999, the services had been provided using master service agreements with MCI WorldCom and Verizon. Under the contracts, the telephone companies collected charges related to calls made from the prisons' pay phones and remitted a portion of the revenue to the State. Transition agreements were established on August 19, 1999, for an 18-month period to allow General Services time to complete a request for proposal (RFP). However, the justification for the sole-source contracts also states that the RFP was eventually canceled. According to General Services, the reason for the cancellation was concern that the telephone companies had been charging too much for calls from inmates to their families in the past and that the bids submitted in response to the RFP could result in even higher fees in the future. Nevertheless, as a result of canceling the RFP, a second set of transition agreements was completed covering the period from February 1, 2001, to February 1, 2002.

The two sets of transition agreements gave the Telecommunications Division 30 months to develop an RFP to solicit bids for the pay-phone service. However, it appears that the Telecommunications Division did little to plan for competitive procurement of the service before the second set of transition agreements expired in February 2002. Specifically, the Telecommunications Division waited until January 2002—one month before the transition agreements were to expire—to submit a request for three-year sole-source contracts with the same vendors. In its sole-source justification, the Telecommunications Division acknowledged that the two vendors did not provide unique services but were "uniquely in a position to provide the services and equipment without interruption and without transition during a period of time that encompasses not only a possible protest of the upcoming RFP, but also the transition process of the new vendor." Because making changes to existing telephone systems in state prisons is logistically and technically complex, careful planning and implementation are critical. Therefore, awarding a contract covering three to four years appears reasonable. However, if the Telecommunications Division had embarked on a careful planning process well before its agreements with the telephone companies expired in August 1999, other companies would have been able to compete for these agreements much earlier.

In Addressing Concerns With Sole-Source Contracts, the State Should Consider Implementing Procedures Used by the Federal Government

The federal government requires an agency to post a public notice when seeking approval of a sole-source contract, and if poor planning necessitates the contract, the agency must specify how it will avoid similar situations in the future.

In some situations it may be necessary for departments to use noncompetitively bid procurement methods. Therefore, General Services is obligated to thoroughly review requests for sole-source contracts and to seek additional information from any department that does not provide sufficient justification to determine whether the request meets the legal requirements for a sole-source contract. General Services should also implement measures to address concerns about the validity of sole-source requests and ensure that prices paid for goods and services obtained through sole-source contracts are appropriate. For example, the federal government requires its agencies to post public notices whenever they are seeking approval of sole-source contracts. This gives other vendors the opportunity to demonstrate their ability to provide the requested goods or services. Additionally, when a sole-source contract is necessary because of poor planning, the federal government requires the requesting agency to demonstrate the steps it is taking to ensure that the agency does not place itself in similar situations in the future.

In addition to actions required by the federal government, General Services should consider other measures to ensure that the State's interests are protected when sole-source contracts are necessary. Specifically, in every sole-source contract, General Services should include provisions that protect the State's interest if the contract needs to be amended or if future goods and services are needed from the sole-source vendor. Such provisions are especially needed for contracts involving proprietary or unique IT systems. The State needs to recognize that technical support, maintenance, and future upgrades and modifications to existing IT systems may be limited to the application developer or manufacturer of the hardware and software components. In these instances, the State may be locked into these vendors for as long as the systems function. Therefore, in an initial IT contract, General Services should include safeguards that account for the effects of the vendor's future pricing schedules, possible changes in support and maintenance packages, and future upgrades or obsolescence of hardware and software components and applications. Without adequate protections built into its contracts, the State could find itself at the mercy of its vendors and could be negatively affected by their future business decisions with little or no recourse.

DESPITE WELL-ESTABLISHED CRITERIA FOR EMERGENCY PURCHASES, DEPARTMENTS SUBMITTED INCORRECT OR INADEQUATE INFORMATION THAT GENERAL SERVICES IMPROPERLY APPROVED

Although both state law and the SAM provide departments with a clear directive as to what constitutes an emergency purchase and what information must be provided to justify such a purchase, General Services did not use a form that specifically requests that information. Departments were compelled to fashion their own letters of explanation justifying why they had to make purchases on an emergency basis. Consequently, the information departments provided was inconsistent and often incomplete, making it difficult to ascertain whether the departments' purported emergency needs had been adequately justified.

When we began our review of the requests for approval of emergency purchases, we expected departments to identify the emergency situations that justified the purchases and to explain the connections between the proposed purchases and the threats posed by the emergencies. We further expected that departments would refer to the statutory definition of an emergency when making their requests.

In our review of 25 purchase requests, all of which General Services approved, we found that in 17 cases the departments were requesting approval for emergency purchases. In the remaining eight cases, the departments were requesting approval for reasons other than meeting emergency needs, such as seeking the purchase of items to meet the special needs of the department.

Of the 17 emergency purchase requests totaling $21.3 million that departments submitted to General Services, nine totaling $2.3 million completely failed to identify the existence of an emergency situation that fell within the statutory definition or to explain how the proposed purchase was related to addressing the threat posed by an emergency. Our review revealed the following weaknesses in the way many departments used emergency purchases: (1) in five cases, the departments did not always have a clear understanding of what constitutes an emergency as defined by state law and, because of poor planning, confused a sense of urgency with an emergency and (2) in four cases, the departments did not adequately explain how the proposed purchase would address the threat posed by the emergency, even when a true emergency did exist.

Of the 17 emergency purchase requests we reviewed, only eight adequately justified the emergency need.

Eight of the 17 purchase requests we reviewed did adequately justify the need to make an emergency purchase by describing an emergency situation that fell within the statutory definition and explaining how the proposed purchase would address the problem posed by the emergency. The total cost of the eight justified purchases was $19 million. Four were related to the energy crisis; two were related to safety concerns in the aftermath of the terrorist attacks of September 11, 2001; one was for equipment rental for firefighters; and one stemmed from a federally declared state of natural disaster. Each of these cases involved a clearly defined, legitimate emergency, and the proposed purchase directly related to addressing the problem posed by the emergency. For example, Fish and Game sought approval to purchase a $226,900 tractor for use in accomplishing restoration work necessitated by storms in 1995 that resulted in a federal declaration of disaster. The submitted request by the department clearly identified this emergency and explained how the proposed purchase would be used to conduct the restoration work.

Requirements for a Valid Emergency Purchase

State law allows a department to make an emergency purchase without competitive bidding when there is a "sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, or property, or essential public services." Classic examples of an emergency include a flood, earthquake, or other natural disaster, or the declaration of an emergency situation by an authorized public official. An example of an emergency purchase that would be clearly justified under this exception is the purchase of additional fire-fighting chemicals during a season of severe and unprecedented forest fires.

Our legal counsel has indicated that the test for determining the existence of an emergency that justifies an exception to the competitive bidding requirement is somewhat subjectively defined by the circumstances of each situation. Moreover, the determination made by a department requesting an emergency purchase will be accorded great deference, in the context of a legal challenge, when the health and safety of the public is at stake. The state courts have also placed greater emphasis on whether the purchase directly addresses the threat that the

emergency situation poses to the public health and safety than on whether the emergency situation could have been avoided in the first place.

The SAM requires that a department proposing an emergency purchase prepare documentation showing that (1) the emergency situation could not have been avoided by reasonable care and diligence or (2) there is an immediate threat of substantial damage or injury to persons committed to the State's care, to employees of the department, to members of the general public, or to property for which the department is responsible. The department must attach the documentation to the purchase request form and submit it to General Services for approval. In addition to providing this justification, all emergency purchase requests must be signed by the secretary of the requesting department or an appointed designee.

Many Departments Misinterpreted What Constitutes an Emergency

Inadequate planning resulted in the need for the Prison Industry Authority to purchase a bakery oven and conveyers totaling $791,000 on an emergency basis.

In our review of 17 emergency purchase requests, we found five totaling $1.1 million that were not prompted by actual emergencies but were examples of departments requesting expedited purchases for other reasons. The common theme throughout many of the unjustified emergency requests was that the departments failed to properly plan for the competitive bidding process for items used in the regular course of business. For example, in one case, the Prison Industry Authority purchased a bakery oven and conveyers totaling $791,000 on an emergency basis. Although there is certainly a compelling need to have a functioning oven in a prison, the submitted materials indicated that prison officials had made numerous attempts to repair the existing oven over the previous four years and thus had plenty of time to plan for a new purchase using a competitive bidding process. The Prison Industry Authority obtained three informal price quotes and awarded the contract to the lowest bidder. However, this informal process does not satisfy the requirements of the State's competitive bidding process.

On one hand, departments hampered General Services' ability to perform its oversight function by failing to provide adequate explanations for their emergency purchase requests. On the other hand, however, General Services failed to perform its oversight function by approving many emergency purchases that did not include adequate justification. The consequence of both practices was a failure to protect the State's interests.

In Some Cases, an Emergency Existed, but the Purchasing Department Did Not Provide Adequate Justification or Clearly Identify an Emergency

We identified two emergency purchase requests for which the departments clearly identified emergency situations that would meet the statutory definition of emergencies but failed to establish any connection between the emergencies and the proposed purchases. Both requests came from the Department of Food and Agriculture (Food and Agriculture) and involved emergency purchases of vehicles costing a total of $505,000. Each request included a purchase order for the vehicles and a lengthy memorandum describing the impact of certain pest species on the natural habitat. Subsequent to our review, Food and Agriculture provided information explaining how the vehicles would be used to address the impact of the pest species. However, neither request submitted to General Services included this explanation. Despite the omission, General Services approved both emergency purchase requests.

We reviewed two additional requests for emergency purchases in which the departments did not identify emergencies as required by state law, but the proposed purchases were clearly essential to protecting the public health and safety. In one request, the CHP sought approval for the emergency purchase of motorcycle helmets costing $107,000 for officers who were assisting in traffic congestion relief in the Los Angeles area. The other purchase request, also submitted by the CHP, was for $503,000 in ammunition that was in short supply because the State had failed to award a new statewide contract promptly. Neither traffic congestion nor a shortage of ammunition is "a sudden, unexpected event," as the statute defines an emergency. Our legal counsel has advised us, however, that because these purchases were directly related to the protection of the public health and safety, it is very unlikely that a court would deem them invalid and would probably defer to General Services' decision to approve the requests.

ALTHOUGH IT DID NOT HAVE THE PROPER AUTHORITY, GENERAL SERVICES GRANTED EXCEPTIONS TO STATE COMPETITIVE BIDDING REQUIREMENTS

General Services incorrectly exempted departments from the State's competitive bidding process for eight of the 25 purchase requests we reviewed. In these cases, the departments did not state that the goods or services were needed because of

General Services incorrectly exempted departments from the State's competitive bidding procurement process for eight of the 25 requests for purchases we reviewed.

an emergency. Rather, in five of the eight instances, the departments indicated the purchases were necessary because of special needs. In the remaining three instances, the departments requested approval to purchase used equipment, thereby saving the State money over the cost of new equipment. According to officials at some of these departments, General Services advised them to file for an exemption to the State's competitive bidding process for the requested purchase.

As previously discussed, state law generally requires departments to use a competitive bidding process when obtaining goods and services. General Services can, by law, grant an exemption from this process if the department can demonstrate that there is only one good or service that can meet its needs or that immediate acquisition is necessary for the protection of the public health, welfare, or safety. Our legal counsel advised us that when a statute contains an exception, that exception must be strictly construed and no other can be allowed. Our legal counsel is not aware of any other exception in state law that would allow for an exemption from competitive bidding because of special needs or a savings to the State.

Despite the fact the purchases did not meet the requirements of either a sole-source contract or an emergency purchase, General Services approved all eight purchases without requiring the departments to go through the formal bidding process. For example, the Department of Rehabilitation (Rehabilitation) submitted a request to purchase 36 vehicles for $924,000. According to Rehabilitation officials, the vehicles would be specially equipped for use by clients participating in the vocational rehabilitation program who are physically unable to use unmodified or alternative forms of transportation. Further, the officials stated that it is difficult to accurately anticipate the demand for vehicles, and they often need to make immediate acquisitions to meet clients' needs. Any delays in the acquisition process, such as those that are inherent in the normal competitive bidding process, would threaten the clients' participation in the program. To its credit, Rehabilitation obtained three informal price quotes and purchased the vehicles from the vendor that provided the lowest quote.

While we agree that meeting its clients' needs is a valid goal for Rehabilitation, current law does not appear to allow for an exemption from the competitive bidding process because of special circumstances that might exist at a particular department. We also question whether there was an immediate

need for 36 vehicles. In fact, according to records provided by Rehabilitation, 24 of the vehicles were not assigned to clients until six to 13 months after the purchase. Therefore, while there may have been a need to expedite the purchase of some vehicles, Rehabilitation would have been able to use the competitive bidding process for vehicles intended for future use.

In another instance, the Department of Motor Vehicles, acting as the administrative support function for the California Complete Count Committee, requested approval to purchase teddy bears for $125,000 to use as promotional items during the 2000 census. The California Complete Count Committee program was authorized and funded separately by the Legislature. The department's request indicated the bears would be distributed at outreach activities occurring within the next few weeks. In this case, the expeditious purchase of an item may be convenient, but is not allowable under current statutes.

We also identified three purchase requests for used equipment that General Services ultimately approved. In one instance, the Department of Forestry and Fire Protection requested approval to purchase three used bulldozers for $492,500. In a letter to General Services accompanying the purchase request, the department stated that purchasing the used equipment would save more than $260,000 over the cost of similarly equipped new bulldozers. Although it may have been in the best interest of the State to purchase the used equipment, it appears there is currently nothing in State law to allow for this exemption.

If General Services wants to continue to approve purchase requests based on factors that are unique to the operations of certain departments, it needs to establish specific criteria and develop a formal process that departments must follow to justify their requests. More importantly, General Services would need to seek a change in the current contracting and procurement laws to allow for other exemptions.

A FAILURE TO ADEQUATELY JUSTIFY SOLE-SOURCE AND EMERGENCY PURCHASES MAY RESULT IN QUESTIONS ABOUT THE VALIDITY OF THE CONTRACTS

The authority of a state department to enter a contract is limited by statute, and any contract established by a state department must be formed in the manner prescribed by statute. If a contract is established without competition and fails to satisfy

the statutory requirements for either a sole-source contract or an emergency purchase, a court might conclude that it is not enforceable as a valid contract. Although this report does not attempt to determine whether any particular contract is invalid, it is important to understand that the consequence of an invalid sole-source contract or emergency purchase is that a court may set it aside as void and unenforceable. To maintain the integrity of the public contracting system and to avoid unnecessary litigation, it is imperative that state departments and General Services rigorously apply the requirements that must be met to validly establish sole-source contracts and emergency purchases.

RECOMMENDATIONS

To comply with statutes governing the use of noncompetitively bid contracts—that is, sole-source contracts and emergency purchases—state departments should take the following actions:

- Require that their legal counsel review all sole-source contracts and emergency purchases for compliance with statutory requirements before submitting them to General Services for approval.

- Implement adequate contracting and procurement procedures to ensure that sufficient time exists to properly plan for the acquisition of goods and services.

To guide state departments in the statutory use of noncompetitively bid contracts, General Services should take the following actions:

- Clarify the distinction between an emergency purchase and a sole-source contract and develop a form that clearly lays out what information is required to justify each type of noncompetitively bid purchase.

- Require its Office of Legal Services to review all sole-source contract requests above a certain price threshold.

- Implement review procedures for sole-source contracts and emergency purchase orders that ensure that departments have complied with all applicable laws and regulations, and require departments to submit documentation that demonstrates compliance.

- Reject all sole-source and emergency purchase requests that fail to meet statutory requirements.

- Seek a change in the current contracting and procurement laws if it wants to continue to exempt purchases from competitive bidding because of the special or unique circumstances of departments. ■

CHAPTER 4

General Services Needs to Strengthen Its Oversight of State Purchasing Activities

CHAPTER SUMMARY

The Department of General Services (General Services) has provided weak oversight and administration of the California Multiple Award Schedules (CMAS) program. As the State's contracting and procurement oversight department, General Services is responsible for establishing policies and procedures for the CMAS program, approving CMAS contracts, and performing audits of CMAS transactions and vendors. However, we found that General Services does not adequately monitor state departments' use of CMAS vendors. Also, General Services' Procurement Division, which is responsible for auditing state departments for compliance with contracting and procurement requirements, is not performing the audits required by state law.

Further, General Services does not sufficiently review CMAS vendors to ensure that they comply with the terms of their contracts with the State. Perhaps more importantly, General Services does not always make sure that other state and local government contracts on which CMAS contracts are based are, in fact, awarded and amended on a competitive basis. As a result, the State may be paying more than it should for the goods and services it purchases. Finally, General Services does not consistently obtain and maintain accurate data on departments' CMAS purchases. Consequently, it is sometimes charging other state departments more than it should for administrative fees.

INSUFFICIENT AUDITS AND REVIEWS WEAKEN GENERAL SERVICES' ABILITY TO MONITOR DEPARTMENTAL PURCHASING PRACTICES

Although state departments annually purchase goods and services worth billions of dollars, General Services does not consistently review departments for compliance with contracting and procurement requirements, thereby

perpetuating the misuses described earlier in the report. The procedures General Services has established for audits and reviews adequately address the critical areas of contracting and procurement, but the frequency of those procedures does not meet statutory requirements or General Services' own guidelines. By law, General Services is required to annually review the purchasing activity of departments that have been granted purchasing authority and audit those departments every three years. However, according to records provided by General Services, it has completed only 60 percent of the required reviews since fiscal year 1999–2000. Moreover, General Services' own policies require audits of departments' purchasing activities that are not being performed as often as needed.

Two divisions within General Services—the Procurement Division and Audit Services—perform contract and procurement reviews and audits. To fulfill the requirement for conducting audits every three years, the Acquisition Quality Assurance and Delegation Resource Programs (Acquisition Quality Assurance Programs) in the Procurement Division conducts reviews of departments that have been delegated purchasing authority from General Services. Generally, the reviews address all areas of purchasing, including master service agreements, sole-source contracts, CMAS contracts, and state credit card transactions. General Services does not have statutory authority to review information technology (IT) purchases as a part of these reviews. The reviews include procedures sufficient to determine whether departments are complying with most purchasing requirements. However, the reviews are not being performed as often as required. Records provided by the Acquisition Quality Assurance Programs show that between July 1999 and January 2003 the Procurement Division had completed only 105 of 174 required reviews. Moreover, less than one-half of the 105 reviews were completed within the required three years. The manager of the Acquisition Quality Assurance Programs stated that, until recently, the Procurement Division had only three staff performing the reviews, which was not enough to meet the statutory requirement.

General Services has conducted only 105 of 174 required reviews since fiscal year 1999–2000, and less than one-half of these were completed on time.

Audit Services has the responsibility, established by General Services' audit charter, to perform comprehensive audits of state departments that have been delegated the responsibility of performing specific functions, including purchasing. Normally, Audit Services conducts the audits under the purview of General Services. Although not as comprehensive as the Procurement Division's reviews, Audit Services' audits do

examine CMAS purchases as well as sole-source contracts and emergency purchases. However, Audit Services has completed only 19 audits of the 40 departments it includes in its audit rotation since July 1998. The lack of frequent and consistent oversight and monitoring of purchasing transactions at state departments likely contributed to the concerns we identified during our review of CMAS purchases, sole-source contracts, and emergency purchases. For example, despite procedures that appear sufficient to determine whether a sole-source contract or emergency purchase is appropriate, the audits probably do not identify systemic misuses of either procurement tool because of their infrequent occurrence. Therefore, as previously discussed in Chapter 3, General Services needs to perform a more thorough review of sole-source contracts and emergency purchases before they are approved. Moreover, increasing the frequency of all audits and reviews may give departments a greater incentive to adhere to contracting and procurement requirements.

MORE FREQUENT REVIEWS OF CMAS VENDORS WOULD HELP GENERAL SERVICES TRACK CONTRACT COMPLIANCE

General Services periodically performs reviews of CMAS vendors to ensure compliance with contract requirements. Among other things, the reviews determine whether the CMAS contract included the goods and services purchased and whether the purchasing department paid the correct price. The review process adequately addresses key areas of contract compliance; however, General Services does not conduct a sufficient number of reviews.

Although General Services reports 2,300 active CMAS vendors as of August 2002, it had performed contract compliance reviews for only 29 from July 1998 through September 2002.

With thousands of vendors on the CMAS list, it is not reasonable for General Services to review them all. Therefore, General Services appropriately targets vendors with the highest dollar sales. Nonetheless, of the 2,300 active CMAS vendors reported by General Services as of August 2002, it had reviewed only 29 from July 1998 through September 2002. As a result, vendors may not be adhering to the maximum price for goods and services under the terms of their CMAS contracts or may be selling goods and services that are not in their approved CMAS contracts—activities cited by General Services during four of the five reviews we looked at. Additionally, according to information included in the General Services' CMAS Supplier Compliance Review procedures for fiscal years 2000–01 through 2002–03,

limited staffing has prevented and will continue to prevent follow-up reviews of CMAS vendors to ensure that previously identified weaknesses have been corrected.

GENERAL SERVICES NEEDS TO IMPROVE ITS PROCESS FOR ADDING NEW VENDORS AND PRODUCTS TO THE CMAS LIST

General Services consistently followed its established procedures for adding new vendors and products to its CMAS list, but the procedures are weak. Because it adds vendors to the CMAS list based on the vetting procedures performed by other government entities that have multiple-award contracts, General Services needs to determine that those contracts were established in accordance with the goals of the CMAS program.

Until General Services strengthens its review of how CMAS base contracts are awarded and amended, departments using the CMAS program cannot be sure the contracts represent good value for the State.

General Services can be reasonably assured that contracts with vendors in the federal multiple-award schedules (FMAS) program, developed by the federal General Services Administration (GSA), have been awarded through a competitive bidding process that considers price. However, because contracts between other government entities and their vendors may not have been awarded under scrutiny equal to that of the federal government, General Services should review them more carefully. In addition, General Services needs greater assurance that amendments to multiple-award contracts between other government entities and vendors are adequately reviewed and approved by the awarding entity. Without such measures, departments using the CMAS program cannot be sure that product prices listed by the CMAS program represent good value and are a good starting point for negotiation.

General Services Has Established Procedures for Adding New Vendors and Products to the CMAS Program

As described in the Introduction, a primary intended benefit of the CMAS program is that the State can purchase goods at competitively assessed prices without incurring the costs involved in the competitive procurement process. General Services allows contracts between other public entities and multiple-award vendors to serve as the basis for state CMAS contracts. Such contracts are called base contracts. In other words, rather than awarding its own base contract under the CMAS program, General Services requires a vendor to submit a written offer of products, services, and prices that reside on an

existing federal or other government entity's multiple-award contract. However, the vendor also must agree to CMAS terms and conditions and provide certain categories of information, such as company size, contractor licenses, and proof of registration with the secretary of state, if applicable.

Because CMAS contracts are based on the multiple-award schedules of other government entities, neither General Services nor a vendor can update CMAS product offerings until the base contract is updated.

Because CMAS contracts are based on multiple-award schedules established by other government entities, neither General Services nor a vendor can update product offerings on a CMAS contract unless the base contract has first been updated. Other requirements vary depending on the type of base contract. The four types of base contracts and the requirements associated with each type are as follows:

- *Applicant holds an FMAS contract (Category 1)*. The applicant must submit a copy of its FMAS contract. If the base FMAS contract is updated (for example, prices change or products or services are added), no amendment to the CMAS contract generally is necessary, and the vendor generally is not required to notify General Services of the schedule change.

- *Applicant piggybacks off another vendor's FMAS contract (Category 2)*. The applicant must submit a copy of the other vendor's FMAS contract off which it intends to piggyback and designate which products and/or services on the schedule it intends to offer. For consulting services, the applicant must also submit customer references to substantiate qualifications. To resell products, the applicant must submit written authorization from the manufacturer, distributor, or GSA schedule owner. For maintenance and repair services, the applicant must submit written authorization from the manufacturer. As in Category 1, changes to the GSA base contract are not reported to the CMAS program, and an amendment to the CMAS contract is not required unless an entirely new product or service is added to the schedule for which the piggyback applicant would like to qualify. The piggyback applicant must then submit the necessary reference and authorization forms.

- *Applicant holds a non-GSA multiple-award contract (Category 3)*. The applicant must submit the solicitation document, such as a request for proposal, used by the non-GSA entity to request a bid from vendors. The solicitation document must state that a price comparison will be part of the evaluation criteria in determining which vendors will be accepted. In addition, General Services requires the applicant vendor to submit the response it sent to the non-GSA entity and the resulting contract, which must contain evidence of multiple awards.

If a vendor wants to make any change to a CMAS contract based on a non-GSA contract, it must request an amendment to the CMAS contract. The vendor must send copies of its changed product pages and show that the entity that awarded the base contract approved the changes. General Services then issues an amendment to the CMAS contract that would either add new product lines or replace the pricing for particular products lines.

- *Applicant piggybacks off another vendor's non-GSA contract (Category 4)*. The applicant must submit the same authorizations and customer references as would a Category 2 applicant. The applicant must also submit the same solicitation document, response, and contract and is under the same amendment procedures as a Category 3 applicant.

Despite Following Its Established Procedures for Awarding CMAS Contracts, General Services Cannot Verify That Base Contracts and Amendments Were Competitively Awarded

To determine if General Services follows its procedures for awarding CMAS contracts, we reviewed documentation for a sample of seven CMAS contracts. We did not look at Category 1 CMAS contracts because, beyond the written offer, company information, and acceptance of CMAS terms and conditions, only copies of the FMAS contracts are required. For each of the seven contracts we tested, General Services obtained the necessary information from the applicant vendors. However, we noted that the files did not contain documentation that General Services independently verified the information provided by the vendors. Additionally, General Services does not have written procedures requiring its staff to do so. As described later, the failure to independently verify a vendor's information can result in the State making a purchase without any assurance that it is obtaining the best possible price.

During our review of the Web portal, we noted a relatively large volume of purchases of both goods and services from one CMAS vendor—the StateStore Incorporated (StateStore).[5] In fact, the StateStore had four separate CMAS contracts, two of which were part of the sample we reviewed. The StateStore is a private reseller specializing in the state government IT market. According to General Services' records, between January 2000 and June 2002, the State made more than 900 purchases totaling

[5] The StateStore is a separate entity from CAL-Store, formerly known as the California State Computer Store, which is the name of a master purchase agreement.

approximately $32 million from the StateStore. The StateStore's CMAS contract that was used to make purchases for the Web portal is based on a multiple-award contract that was originally established between the StateStore and the Merced County Fast Open Contracts Utilization Services (FOCUS) program. According to General Services, CMAS vendors use FOCUS contracts as the bases for CMAS contracts more frequently than any other non-FMAS entity's contracts. Consequently, we deemed it appropriate to review the FOCUS program more closely.

Merced County started the FOCUS program in 1997 as a way to establish multiple-award contracts for information technology goods and services. Merced County allows other government entities to use its preestablished contracts as a basis for procurement. Like the CMAS program, the FOCUS program allows government entities to avoid the time and cost of a lengthy proposal process by purchasing from contracts that have already been competitively assessed. However, unlike the CMAS program, FOCUS vendors are required to pay Merced County a percentage of the revenue generated by the contract. These vendors pay the fee when other governments, including the State, use a FOCUS contract as a basis for their own multiple-award schedules. Consequently, it is in the best interest of Merced County to amend its FOCUS contracts to accommodate the needs of other governments. In our review, we found the following four conditions:

- Because the FOCUS program charges vendors a fee based on the purchase price for sales to entities outside its jurisdictional boundaries, the cost of goods and services available through the FOCUS program contracts may not be the lowest available.

- Merced County did not enforce its requirements for FOCUS vendors. Although the StateStore bid submitted to the FOCUS program did not comply with all the requirements of the request for proposal, Merced County's FOCUS granted it a multiple-award contract.

- The StateStore was able to amend its FOCUS contract numerous times, adding many new product lines, without Merced County staff consistently comparing them to those of competitors.

- General Services does not review the policies and procedures of entities awarding base contracts; therefore, it had not reviewed the process used by Merced County to award the FOCUS program's StateStore contract.

Because of these four conditions, departments using the StateStore's CMAS contract could pay too much for goods and services bought under the contract. Moreover, because General Services does not have an adequate process to ensure that non-GSA entities properly award and amend their multiple-award contracts, departments have little assurance that CMAS prices listed on these types of contracts represent a good value or a strategic starting point for negotiations.

Merced County's Practice of Charging FOCUS Vendors a Fee Based on Contract Sales May Lessen Its Ability to Obtain the Lowest Prices

As stated previously, the Merced County FOCUS program collects a percentage fee from FOCUS contract holders based on the total amount purchased on the contract. Simply put, every time a government entity, including the State, purchases goods and services from a vendor's FOCUS contract, the vendor is required to pay a percentage of the purchase price to Merced County. The percentage charged to the StateStore ranged from 0.25 percent to 1 percent, depending on sales volume. Given the requirement to pay FOCUS a percentage of their proceeds, vendors may opt to offer smaller discounts on goods and services available through their FOCUS contracts. The fact that the FOCUS program's policies and procedures state that "pricing will generally be viewed from a 'what the market will bear' philosophy," only increases the concern that FOCUS prices may not be the best available. Moreover, General Services gives assurances to departments that the prices listed by the CMAS program have already been competitively assessed and thus are reasonable. This implies that an independent party has compared the prices against competition and found them reasonable. However, a FOCUS program official stated that Merced County allows vendors to price according to their own view of the competition for services such as consulting, engineering, and support that are difficult to assess against others.

General Services Did Not Confirm That the FOCUS Program Followed the Requirements for Vendors Specified in the Request for Proposal

In August 2000, General Services added the StateStore to the CMAS list based on a FOCUS contract granted to the StateStore in May 2000. In the request for proposal that Merced County issued and to which the StateStore responded, Merced County told applicants that they must meet the following requirements:

- Demonstrate that the prices of products and services offered in the submitted bid represent the most competitive pricing given to state and local government entities.
- Offer only prices that reflect an across-the-board percentage discount (or cost-plus-percentage markup) for every item submitted.
- Specify the percentage discount being offered.

General Services did not question inconsistencies between Merced County's request for proposal and the StateStore's submitted bid.

Despite this language, the StateStore submitted a bid to Merced County that did not contain evidence that the prices offered were the most competitive prices given to state and local governments, although the StateStore stated in the bid that it would offer products at the most competitive prices available. Additionally, the StateStore did not commit to a percentage discount or a percentage over cost for four of the seven product lines listed in the submitted bid. For three of the product lines, the StateStore did not list prices. For the fourth product line, Broadbase Software, the submitted bid contained "TBD" (to be determined) for the price of consulting services rather than a definitive commitment to a particular hourly or daily rate. Despite these flaws, Merced County granted the StateStore a FOCUS contract without any changes to the bid.

For its part, General Services apparently removed the TBD line completely before granting the StateStore a CMAS contract, but documentation does not suggest that General Services questioned the other inconsistencies between Merced County's request for proposal and the submitted bid. General Services procedures for adding vendors to the CMAS list only require its staff to review the request for proposal for evidence that price is part of the evaluation criteria and does not compel the analyst to compare the request to what was actually submitted. The inconsistencies between the request for proposal and the submitted bid should have caused General Services to question Merced County's bid assessment processes.

The FOCUS Program Did Not Assess Contract Amendments for Competitiveness

Between August 2000 and March 2002, the StateStore amended its FOCUS contract 20 times, adding new product lines and updating prices for existing lines. State officials requested most of the FOCUS contract amendments so that the StateStore's CMAS contract could likewise be amended, thereby enabling the State to purchase specific goods and services for the Web portal. To include a product or price update in its CMAS contract, the StateStore had to apply for a CMAS amendment. The premise behind the CMAS amendment process is that all base contracts and any subsequent amendments have been competitively assessed. At least in the case of the Merced County FOCUS program, competitive assessment did not occur.

The StateStore amended its FOCUS contract 20 times between August 2000 and March 2002. State officials requested most of these amendments so that the StateStore's CMAS contract could likewise be amended, thereby enabling the State to purchase specific goods and services for the Web portal.

In the FOCUS program's policies and procedures, Merced County admits it only checks random items in contract updates and that updates are subject to the same "what the market will bear" pricing philosophy previously mentioned. We also found that, although a price update for the StateStore often included many products and prices, Merced County officials usually approved the updates within two business days. On six occasions, Merced County approved the updates on the same day the StateStore requested them, and for one of these six requests, Merced County updated the StateStore contract with four new product lines in a little more than an hour. Only one person, the FOCUS program manager, approved the six updates. Consequently, we do not believe that Merced County adequately compared the prices of the newly added product lines or new prices of existing products to prices of competing product lines.

Without Policies and Procedures to Review the Practices of Entities That Award Base Contracts, General Services Cannot Maintain the Integrity of CMAS Contracts

General Services' practices for awarding CMAS contracts do not include any type of review of the procedures of entities that award base contracts. The only criteria for a base contract is that evidence exists that price was part of the evaluation criteria of a base contract's request for proposal and that the contract is of a multiple-award nature. Because the Merced County FOCUS contract and proposal request met these criteria, the StateStore was able to use it as a base contract for its CMAS contract without any review by General Services to make sure that Merced County had competitively assessed the contract and its subsequent amendments. In fact, we found

significant discrepancies between the request for proposal and the StateStore's response to it as well as several aspects of FOCUS program policy and procedures that are inconsistent with the goals of the CMAS program. Because Merced County is not required to comply with laws governing the awarding of state contracts, we are not questioning its contracting or procurement processes. However, General Services has a responsibility to employ sufficient measures to ensure that the State's interests are protected. Therefore, General Services should perform a more diligent review of the processes used by other state and local government entities when evaluating multiple-award contract proposals. Such a review of Merced County might not have exposed all the weaknesses associated with the FOCUS contract, but without any review whatsoever, General Services has no chance of identifying entities whose motivations and policies do not match CMAS goals.

INACCURATE DATA CAUSED GENERAL SERVICES TO SOMETIMES OVERCHARGE DEPARTMENTS USING THE CMAS PROGRAM

The fees General Services charges state departments for administering the CMAS program are sometimes excessive because of errors in the information system used to record CMAS purchases. During the period we reviewed, General Services charged departments an administrative fee of 1.21 percent of each CMAS purchase. Purchases from small-business vendors are exempt. With this fee, General Services oversees the CMAS program and provides workshops and guidance for state departments and vendors. To determine and record the fees, General Services uses its Procurement Information Network (PIN)—an information system containing data on CMAS and other purchasing transactions. According to General Services, its Procurement Division enters data on 1,200 to 1,500 CMAS orders per day into its PIN system.

We reviewed 90 CMAS purchases at nine departments and found 24 instances in which General Services had either entered the incorrect amount in the PIN system or had no record of the transaction. According to General Services' CMAS procedures, departments are responsible for submitting CMAS purchase orders to General Services. Therefore, it is possible that missing records were the result of departments failing to submit the required information to General Services. Duplicate entries occurred when departments

submitted amended purchase orders to General Services, which subsequently recorded the amended amount without deleting or updating the original entry.

General Services overcharged departments $219,000 for CMAS purchases because of inaccurate data in its PIN system.

Among other things, General Services uses its PIN system to charge departments an administrative fee for purchasing goods and services from CMAS vendors. When we reviewed 10 incorrectly recorded transactions, we found that General Services had overcharged departments by more than $219,000. For example, the Department of Consumer Affairs (Consumer Affairs) made a purchase totaling $6,300 from a CMAS vendor. However, General Services erroneously recorded the amount as $6.3 million and charged Consumer Affairs more than $77,000 instead of the correct $77 fee. In another instance, General Services recorded an $8.6 million purchase by the Health and Human Services Data Center twice, resulting in an overcharge of more than $104,000. General Services charges departments electronically and later sends billing information to the departments. Neither Consumer Affairs nor the Health and Human Services Data Center reviewed General Services' billings for accuracy and therefore did not challenge the inflated fees. In fact, most of the nine departments we reviewed indicated that they do not reconcile the billing information received from General Services to their CMAS purchase orders. Although General Services is responsible for recording CMAS purchases correctly in its PIN system so it can charge departments the correct administrative fees, departments should assume some responsibility for ensuring correct payments by reconciling their accounts and notifying General Services when they are charged incorrect amounts to obtain credit when appropriate. In addition, departments should submit copies of all CMAS purchase orders to General Services' Procurement Division so it has a complete record of purchasing activity and can charge departments the appropriate administrative fees.

RECOMMENDATIONS

To improve its administration of the CMAS program, General Services should take the following actions:

- Increase the frequency of its reviews of CMAS vendors. Additionally, before accepting any contracts as base contracts, General Services should make certain that processes established by other government entities for awarding and amending multiple-award contracts are in accordance with CMAS goals.

- As discussed further in Chapter 5, General Services should implement the recommendations made by the Governor's Task Force on Contracting and Procurement Review. In the short term, General Services should focus on the following:

  - Consider reducing or eliminating the delegated purchasing authority of departments that fail to comply with contracting and procurement requirements.

  - Consult with departments to determine what can be done to facilitate monthly reconciliation of CMAS purchasing and billing activities. ■

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CHAPTER 5

Recommendations of the Governor's Task Force on Contracting and Procurement Review Should Improve Controls on Contracting and Procurement

CHAPTER SUMMARY

In August 2002, the Governor's Task Force on Contracting and Procurement Review (task force) recommended purchasing reforms, completing its directive from the governor's Executive Order issued on May 20, 2002. The recommendations call for comprehensive changes in the State's contracting and procurement procedures, including the use of sole-source contracts and the California Multiple Awards Schedules (CMAS) program. Prompted by the controversy surrounding the Oracle enterprise licensing agreement, among other things, the governor asked the task force to review the State's contracting and procurement procedures and recommend the necessary statutory, regulatory, or administrative changes to "ensure that open and competitive bidding is utilized to the greatest extent possible" by state departments.

In general, we believe the task force's recommended changes, if properly implemented, should address many of the weaknesses in the CMAS program and noncompetitive bidding procedures we identify in this report. However, we believe that additional steps should be implemented based on the results of our audit, surveys of nine state departments, and review of practices used by other government entities.

The most immediate changes recommended by the task force reinforce interim guidelines created and implemented by the Department of General Services (General Services) under the Executive Order that would require departments to obtain three price quotes before making a CMAS purchase and prohibit the use of CMAS contracts for information technology (IT) projects costing more than $5 million, unless such a purchase is approved as part of

a feasibility study report.[6] Other recommendations focus on General Services' need to increase the frequency of its contract audits and legal reviews, develop a contracting and procurement certification and training program, and begin implementation of a long-range plan for a new data integration system.

Key Task Force Recommendations

To departments:

- Must solicit and obtain at least three price quotes, including at least one from a small business when making a CMAS purchase.

To General Services:

- Develop standards and criteria for potential CMAS vendors that are not part of the federal multiple-award schedules program.
- Adopt a policy prohibiting departments from using CMAS or master agreements for large IT projects unless approved as part of feasibility study reports.
- Perform random audits and compliance reviews of departments' contracting and procurement transactions.
- Develop a uniform set of policies, procedures, and processes for contracting and procurement activities.
- Develop and deliver a comprehensive training and certification program for state contracting and procurement officials.
- Implement a comprehensive electronic procurement system for all state contract and procurement transactions.
- Ensure legal review of all high-risk transactions, including large IT projects.
- Involve stakeholders in continuous improvement of contracting and procurement processes.

ALTHOUGH TASK FORCE RECOMMENDATIONS ADDRESS MOST WEAKNESSES, SOME CANNOT BE IMPLEMENTED IMMEDIATELY, AND OTHERS ARE NEEDED

In August 2002, the task force made 20 recommendations designed to improve the contracting and procurement processes of the State. The recommendations focus on the use of the CMAS program and noncompetitively bid contracts and on establishing contracting and procurement standards for state departments and General Services—the State's contracting and procurement oversight department. For example, the task force recommended that departments be required to solicit and obtain three price quotes before placing an order with a CMAS vendor, similar to the interim contracting guidelines issued by General Services during the task force's review period. Before establishing the interim guidelines, General Services only recommended that departments compare CMAS contract prices.

Further, the task force advised General Services to prohibit the use of CMAS contracts, as well as any other contracting method in the Master Agreement Program,[7] for large-scale IT projects unless such an acquisition is approved as part of a feasibility study report. The task force also recommended that General Services perform random audits or reviews of departments' purchasing practices for compliance with requirements and develop protocols for departments to conduct internal reviews and report their results to General Services.

[6] A feasibility study report gives the business and technical reasons to justify investing state resources in an IT project, why the proposed project is needed, the means for ensuring its success, and a comprehensive analysis of its benefits and costs. Feasibility study reports must be approved by the Department of Finance.

[7] The Master Agreement Program includes master rental agreements, master purchase agreements, master service agreements, statewide commodity contracts, state price schedules, and Western States Contracting Alliance contracts.

Although state law and General Services' own policies currently require it to perform limited reviews and audits of state departments' purchasing practices, as previously discussed in Chapter 4, we found the reviews and audits were infrequent. The manager of General Services' Acquisition Quality Assurance and Delegation Resource Programs (Acquisition Quality Assurance Programs) told us she was recently able to hire the additional staff needed to complete the required reviews in a timely manner.

The task force recognizes, and we concur, that budgetary and other constraints make it impractical to implement some of the recommendations in the short term. For instance, the task force recommended that General Services develop a comprehensive training and certification program for state purchasing personnel. However, the success of such a program depends on a variety of issues being addressed, including what types and sources of the training are available and who within the State needs the training. The task force also views the implementation of a comprehensive electronic procurement system as a long-term project. Although many aspects of the proposed system, including online training and electronic routing of contract and procurement documents, may be too costly given the State's current fiscal crisis, many improvements could be made to General Services' current IT system.

A comprehensive list of the recommendations approved by the task force is shown in Appendix B. Based on the results of our review of nine departments and General Services, we believe the recommendations shown in the text box on page 74 are the most critical. Moreover, we recommend that General Services take, and the Legislature consider, additional steps not addressed by the task force to further improve the State's contracting procurement procedures, as noted at the end of this chapter.

Departments Must Compare Prices Among CMAS Vendors

Prior to a May 2002 Executive Order, departments' use of CMAS did not always guarantee that the State received the best value for the taxpayers' dollar.

A CMAS contract can be an appropriate tool for obtaining goods and services in an effective and streamlined manner. However, because of the way they were previously used by departments, CMAS contracts did not always guarantee that the State received the best value for taxpayers' dollars. As discussed in Chapter 1, before General Services issued its interim guidelines as a result of the May 2002 Executive Order, departments did not always compare prices when purchasing goods and services from CMAS vendors. Some state purchasing personnel have the impression that the published or quoted CMAS prices represented the

best prices available to the State because the vendors had been awarded contracts based on a competitive process. Although General Services does foster that perception in its guidelines to departments, there is little evidence that the prices and products of CMAS vendors have been compared to each other. In fact, CMAS prices, which are preestablished in federal or other government entity contracts, are merely ceiling prices that a vendor cannot exceed.

When government entities competitively assess vendor prices, they are only trying to determine if prices are fair and reasonable, not what is the "best price." It is possible, however, to receive significant savings through price comparisons and negotiations. Therefore, we believe implementation of the task force's recommendation is necessary to ensure that the State receives the best value for goods and services purchased through CMAS contracts.

In August 1999, the Bureau of State Audits (bureau) recommended that departments comparison shop by obtaining three price quotes from competing CMAS vendors for all purchases that exceed a certain dollar threshold. However, General Services did not implement our recommendation until May 2002, in response to the Executive Order calling for contracting and procurement reforms. The task force subsequently reinforced the bureau's position when it included the new policy in its recommendations. Although we found that departments are generally complying with the new requirements, we believe that the Legislature should consider revising existing CMAS statutes to include language that requires departments to obtain at least three price quotes before making CMAS purchases to ensure that departments rigorously implement the task force recommendation.

A standard form for departments to use to document obtaining three price quotes from vendors would allow General Services' audit staff to assess departments' compliance with revised CMAS requirements.

We also noted that there is no standard form for departments to use consistently to document their efforts in obtaining three price quotes from vendors. Therefore, we suggest that General Services develop such a form, which each department should also use to document its basis for determining best value when cost is not the determining factor in a purchase. A standard form would help ensure that departments have sufficiently documented both their solicitation efforts and their best value determination, when applicable. Further, the form would allow General Services' audit staff to assess whether departments were complying with the revised CMAS requirements and could be used on a random basis by the audit staff to confirm with vendors that departments were obtaining price quotes.

Despite the fact that CMAS contract prices represent only ceiling prices that vendors cannot exceed, General Services only encourages departments to negotiate lower prices. The federal multiple-awards schedule (FMAS) program uses one device to ensure that agencies obtain volume discounts. Specifically, under the FMAS program, a maximum quantity per order is included on every vendor's price list. This threshold serves as a trigger point for an agency to seek additional price reductions if the agency is ordering more than the threshold amount. To promote increased negotiation efforts by departments, we think General Services should consider adopting maximum order quantities into its CMAS price list. For CMAS contracts based on FMAS contracts, the threshold levels could be adopted from the FMAS contracts. For CMAS contracts based on non-FMAS contracts, maximum order levels should be established. While the CMAS contractor would not be obligated to offer additional discounts from the contracted price, the threshold would provide a useful tool to prompt departments to seek larger discounts or additional quotes from other CMAS vendors.

Acquisitions of Large IT Projects Using CMAS Contracts and Master Agreements Should Be Prohibited Unless Approved in Advance

The CMAS program, although created to enhance the effectiveness and efficiency of the overall procurement process, was intended mainly to leverage the State's buying power for routinely purchased services and commercial "off-the-shelf" items that met a distinct need for a specified product or service. Conversely, IT system integration projects are by nature large, complex, long-term undertakings that operate under an entirely different set of requirements and processes. The task force stated that CMAS contracts and master service agreements (MSAs) were never designed to be used for such projects and acknowledged that stringing together a series of CMAS contracts or MSAs to implement a large IT system circumvents the controls and oversight built into the acquisition process for such systems.

The task force recommended that General Services adopt a policy to prohibit the use of CMAS contracts or MSAs for large IT system integration projects.

Based on its assessment of the capabilities of the CMAS program and MSAs, the task force recommended that General Services adopt a policy that, except under certain circumstances, prohibits the use of CMAS contracts or MSAs to acquire large IT system integration projects. This recommendation seems warranted, given the complete lack of adherence to requirements for and controls over large IT projects and the CMAS program as described in Chapter 2.

Inadequate Procedures for Reviewing the Processes Other Government Entities Use to Award and Amend Base Contracts Promotes Departmental Misuse of CMAS Contracts

Without strict criteria for awarding and amending CMAS contracts to vendors that do not hold FMAS contracts, General Services cannot completely eliminate misuses of CMAS contracts. Specifically, General Services currently does not ensure that base contract prices have been subjected to a competitive evaluation process when awarding contracts to vendors that do not have FMAS contracts—that is, vendors that either have contracts with other state or local governments or are piggybacking off other vendors' contracts.

In its recommendations of August 2002, the task force addressed the problems surrounding CMAS piggyback contracts, in which vendors agree to provide the same products or services at the same or lower prices as vendors that hold base contracts under other public entities' multiple-award schedules programs. According to General Services, about 87 percent of CMAS contracts are piggyback contracts.

The task force noted that General Services needs to establish specific criteria or standards to qualify piggybacking vendors, as it does for vendors with base contracts with other government entities. In theory, vendors holding base contracts have had to meet business and responsibility requirements to obtain their CMAS contracts. The only requirement General Services currently places on piggybacking vendors is that they must agree to the product and pricing stipulations of the vendors holding the base contracts.

General Services needs to strengthen its procedures for reviewing processes used by other state and local governments when awarding and amending base contracts.

Although the task force did not suggest that General Services revise its procedure for awarding contracts to vendors based on contracts they hold with other government entities, we believe the process has weaknesses. As previously discussed in Chapter 4, we found that General Services often awards CMAS contracts without adequately evaluating the competitive-pricing processes that other state and local governments use to award base contracts. Therefore, the State lacks assurance that the prices reflected in these contracts are fair and reasonable. Likewise, General Services does not review the process that other state and local governments use to approve amendments to their contracts, leaving the State, again, with little assurance that the corresponding CMAS amendments have been competitively

assessed. Further, state departments can use the amendment process to obtain specific products and services by directing preselected vendors to amend their base contracts.

The StateStore Incorporated's (StateStore) CMAS contract demonstrates how the lack of strict guidelines for making contract amendments enables state departments to abuse CMAS contracts.[8] Among the goods and services purchased from the StateStore for the Web portal, only those provided by Broadbase Software were included in the StateStore's initial May 2000 base contract. At the request of the State, either directly or indirectly, the StateStore added other products and services, including those offered by Broadvision, Interwoven, and Verity Software, in September and October 2000 to its base contract. After each base contract amendment, the StateStore added the products to its CMAS contract by applying for and obtaining a CMAS contract supplement from General Services. General Services amended the StateStore's CMAS contract 13 times between August 2000 and April 2002 to update price lists and add computer software products, maintenance, and consulting services.

Although we agree with the task force recommendation that General Services should develop specific criteria for awarding piggyback contracts, we also believe that General Services should strengthen its procedures for reviewing the process used by other government entities when awarding and amending base contracts.

General Services Plans to Increase the Frequency of Its Procurement Reviews and Audits

The task force recommended that General Services perform random audits or compliance reviews of the purchasing activities of state departments that have been granted procurement authority by General Services. Currently, General Services is required by law to review state departments' contracting and procurement transactions once every three years. However, considering the large volume of contracting and procurement transactions, the task force concluded that once every three years is not often enough to mitigate problematic practices before they escalate and recommended that audits and compliance reviews be done more frequently. As previously discussed in Chapter 4, between July 1999 and January 2003, General Services performed only 105 of the 174 required reviews. According to the manager of the Acquisition

[8] The StateStore is a separate entity from CAL-Store, formerly known as the California State Computer Store, which is the name of a master purchase agreement.

Quality Assurance Programs, limited staffing prevented General Services from completing the required reviews, but the eight additional staff recently hired should help solve this problem.

The task force also recommended that General Services establish protocols for all departments with internal auditors to conduct their own contracting and procurement audits and report the results to General Services (many large departments already perform such audits). In addition, all state departments are required to certify the adequacy of their internal administrative and accounting controls every two years. The Department of Finance (Finance) issues a guide to assist in evaluating these controls. To implement the task force's recommendation, we believe General Services should work with Finance to revise the guidelines for the required internal audits to include specific procedures for reviewing sole-source contracts and CMAS purchases. The biennial schedule of the internal audits would help ensure that departments conduct a contract and procurement review more frequently than is currently done by General Services. Further, General Services could limit its audits and reviews of some departments to an evaluation of the adequacy of the departments' most recent internal audits.

General Services should work with Finance and department internal auditors to improve reviews of contracting and procurement practices.

Potential Vendors Find It Difficult to Learn What Requirements Apply to Particular Contracting Situations

Unlike other administrative departments, General Services establishes and maintains its own policies and procedures on state contracting and procurement practices. Although the public has access to the various documents defining these policies and procedures, finding specific information can be difficult. Consequently, General Services is limiting the vendors' ability to ensure that their contracts adhere to current rules and regulations.

Generally, administrative agencies such as General Services adopt formal rules and regulations using the procedures set out in the Administrative Procedure Act. The process allows the public to review and comment on proposed regulations. The proposed regulations are subsequently published, are made available to the public, and have the same force and effect as law.

General Services is not required to follow this formal process to adopt the policies and procedures it uses to administer the State's public contracting system. Instead, General Services has developed the State Contracting Manual, the State Administrative Manual, and the California Acquisitions Manual using an informal process that is not subject to public scrutiny.

General Services also prepares Management Memos and Bulletins (memos) that supplement or, in some cases, supplant the policies and procedures defined in the three manuals. These memos, as well as the full text of the manuals, are available on the Web site maintained by General Services. In addition, the public contracting arena has a long history of Executive Orders, issued by the governor, that often override policies and procedures developed by General Services. To determine the current procedures that apply to any given contracting situation, a potential vendor must navigate a complex maze of memos and other materials. The difficulty of this task can limit vendors' ability to ensure that their contracts conform to current rules and regulations and may prevent some vendors from even attempting the task.

To determine the current procedures that apply to any given contracting situation, a potential vendor must navigate a complex maze of memos, Executive Orders, and three manuals developed by General Services.

As the department charged with overseeing the State's public contracting system, General Services has an obligation to provide state departments and vendors with a clear, consistent system of requirements for public contracting. We strongly concur with the task force's recommendation that General Services develop a uniform set of policies, procedures, and processes for contracting and procurement activities that the public can easily access.

A Comprehensive Training and Certification Program Would Emphasize Best Value in Purchasing

During meetings with General Services and the task force, most state departments expressed the need for enhanced training and professional development for contracting and procurement personnel. Six respondents to our survey of nine departments also stated that more training was needed, especially for the more specialized aspects of procurement such as IT acquisition. The task force acknowledged that General Services offers a number of contracting and procurement courses and believes that these classes could form the basis for the development of a comprehensive program. However, we attended one of General Services' CMAS classes and, although it provided an overview of the CMAS program, it did not provide sufficient detail for

departmental purchasing personnel to use the CMAS program effectively, especially for those purchases that are generally not routine for a department, such as software and personal services.

To train departmental purchasing personnel more effectively, we believe General Services needs to develop classes that provide comprehensive coverage of sole-source contracts, emergency purchases, and CMAS contracts, and departments need to ensure that affected personnel attend the classes periodically. The task force agreed that there is an urgent need for General Services to develop and deliver targeted training to contracting and procurement personnel on how to deal with some of the complex realities of the contracting process, including the CMAS program, and to ensure that those personnel are aware of the regulations and policy requirements regarding ethics violations and conflicts of interest.

The federal Department of Defense has a center dedicated to improving the professionalism of the acquisition workforce, and the center plays a significant part in providing procurement and contracting personnel the opportunity to become certified. In addition, several states, including Virginia and Texas, have developed training programs for contracting and procurement personnel that lead to professional certification. General Services may be able to obtain information from these entities that would assist it in developing training programs. Appendix A provides information on the characteristics of other government entities' multiple-award schedules programs.

Classes on Contract Management and Administration That General Services Could Include in a Training Program

- Overview of contracting
- Project and contract management
- Basic principles of contract law
- Legal contracting authority
- Acquisition strategy and planning
- Source selection strategy
- Elements of the solicitation process
- Solicitation design, development, and proposal evaluation process
- Contract negotiation and approval
- Source selection criteria
- Request for proposal
- Negotiations
- Introduction to cost and price analysis
- Innovative contracting

Likewise, the task force recommended that General Services develop and deliver a comprehensive training and certification program for state contracting and procurement officials. The task force also recommended that General Services optimize state resources by using existing programs as appropriate. For example, a nonprofit center (center) at one California State University (CSU) campus may already have many of the components that could be useful for state department training. The center's partnership with Los Angeles County in 1999 allowed that county to offer programs for its managers at all five CSU campuses in greater Los Angeles. Collaboration between the center and

General Services might be the best means of using the existing infrastructures of both systems to provide training quickly to contracting and procurement officials in many areas of the State.

In addition to training state purchasing personnel, General Services should also consider holding periodic information sessions with CMAS vendors, given the responsibilities that they have. While General Services has occasionally conducted vendor seminars in the past, these were done on request and were geared more toward marketing the CMAS program than on providing a foundation for working effectively with state departments. Although General Services provides each CMAS vendor with both a vendor information packet and online resources, most of the nine departments we surveyed indicated they had experienced problems working with CMAS vendors. Typically, the problems centered on departments' efforts to obtain CMAS contract information, which vendors are required to provide. During our review of other states' practices, we found that Texas and Washington require their vendors to have training specific to their respective multiple-award schedules programs before they award contracts. Although requiring formal training may not be practical given the size and diversity of the State's vendor population, providing periodic seminars on a consistent basis for vendors and state department representatives should assist in clarifying the roles and responsibilities of each.

The task force views the implementation of a comprehensive training and certification program for purchasing personnel as a long-term project.

The task force views the implementation of a comprehensive training and certification program for state purchasing personnel as a long-term project. We agree that the State's current budgetary problems and the time involved in developing an effective program make rapid implementation of all aspects of this recommendation impractical. However, we believe that General Services should immediately evaluate the curriculum for its existing training classes and vendor seminars and consider implementing some short-term changes until a more comprehensive program can be developed. The need for more immediate, consistent training is especially important given the changes in the State's contracting and procurement processes recently implemented by General Services. Moreover, according to General Services, more than $7 billion was spent on goods, services, and IT systems in fiscal year 2000–01. Therefore, it is crucial that state employees have the tools necessary to make wise purchasing decisions.

A New Data Integration System Is a Long-Term Goal, but General Services Can Address Some IT Issues Immediately

General Services and the task force acknowledge that the State currently does not have the tools necessary to provide usable, accurate information on the State's contracting and procurement transactions. For example, the task force reported that General Services cannot determine with any certainty how much state departments spend each year on contracting and procurement. Moreover, according to General Services, it can often take weeks to compile requested data, and even then its reliability is suspect. The task force recommended developing and implementing new IT systems to solve these problems, but rather than relying on such long-term projects, General Services can make some immediate changes to its current system.

Numerous errors in its current IT system for recording CMAS purchases illustrate the need to implement a new system for tracking and reporting CMAS transactions.

During our testing at the departments, we confirmed that the IT system General Services uses to record data on CMAS transactions contains erroneous information. Specifically, as previously described in Chapter 4, we found numerous instances in which General Services incorrectly entered CMAS data from departments into its database, including duplicate entries and inaccurate amounts for purchase orders. General Services summarized its IT problems by stating that there is no single system that captures and tracks the data for individual contracting and procurement transactions that could be used to leverage the State's buying power more effectively, to streamline processing, or simply to provide ready responses to inquiries on particular issues or actions.

In response to General Services' analysis of these IT issues, the task force recommended that General Services implement two new systems: (1) an integrated system that would capture and track transactions executed by state agencies and (2) a comprehensive IT system for all state contracting and procurement transactions that would give the public access to contracting and procurement opportunities and would give the public and departments access to online product and pricing comparisons and electronic bidding. Because this kind of major overhaul of General Services' IT system would be costly and time-consuming, it is not immediately feasible given the State's current financial problems.

The task force also proposed an interim solution that is less costly and focuses on improving the accuracy and availability of contracting and procurement data. However, this short-term recommendation generally restates the need to track data that

General Services already captures, such as contract and purchase order dates and amounts, vendor names, and procurement methods. Given the problems we identified with General Services' current method for capturing the data, we believe it is important to focus on efforts to ensure the data's accuracy. One possible solution would be for General Services to work with departments to establish a process to reconcile their purchasing information with invoices and reports prepared by General Services. Such reconciliation would allow departments to report and correct errors to General Services, thereby preventing incorrect billings and increasing the reliability of purchasing data. In addition, we believe General Services should issue instructions to all state departments reinforcing the importance of reporting all contracting and procurement transactions.

Finally, to increase departments' ability to access online information about the CMAS program, we believe General Services should explore the possibility of including copies of vendor contracts on its Web site. The vendor information General Services currently provides on its Web site is limited. For example, only 12 categories exist for information on goods and services available from each CMAS vendor. Consequently, the Web site does not list all goods and services available under a particular CMAS contract and often lists only generic product descriptions—copiers and software, for example. The majority of the departments we visited stated that if vendor contract and catalog pricing information were available on the CMAS Web site, it would improve their ability to determine which products and services were covered under CMAS contracts—something departments were not consistently doing—and expedite the process of comparing prices. All departments we surveyed noted that vendors are unreliable about providing product and pricing information or do not send requested copies of CMAS contracts. Online access to vendor contracts would help eliminate the possibility of vendors providing product and pricing information to departments that is not consistent with their CMAS contracts, a problem we found in our review of CMAS purchases. If General Services controlled the vendor information by including it on its Web site, departments would be less likely to purchase goods and services that were not included in approved CMAS contracts.

Given the difficulties departments experience in obtaining vendor contract and pricing catalog information, General Services should identify the available options and associated costs to determine whether it is cost beneficial to incorporate this information in its Web site.

Thorough Legal Review of High-Risk IT Contracts Is a Priority

As evidenced by the recent controversy surrounding the State's contract with Oracle, it is essential that General Services give high-risk contracts more thorough legal scrutiny. This is especially true with IT contracts, which are generally more complex than other contracts. According to officials at General Services, its Office of Legal Services (Legal Services) reviews about 5,000 service contracts each year. However, Legal Services has little involvement in reviewing IT contracts. Rather, General Services' Procurement Division is responsible for review and approval of all IT contracts.

Transactions That General Services Identifies as High Risk and in Need of Legal Review

- Large IT system integration projects
- Projects that involve public safety
- Projects that may involve conflicts of interest
- Complex projects
- Hazardous activities
- IT contracts worth more than a specified dollar amount
- Contracts with federal matching funds

Because of the inherent complexities of large IT contracts, the task force recommended that General Services ensure these and other high-risk contracts receive sufficient review by Legal Services. Similarly, in our April 2002 report on the Oracle enterprise licensing agreement, we recommended that the Legislature consider requiring General Services to conduct a legal review of any IT contract valued at more than a specified dollar amount. We also recommended that General Services assemble a negotiating team with the necessary expertise to protect the State's interest before negotiating and entering future complex contracts.

Similarly, the task force suggested that, for more complex contracts, it might be prudent to include Legal Services in the entire acquisition process, including planning, document preparation, and negotiation. The task force recognizes that General Services' legal resources are limited. Therefore, it recommended that the allocation of legal resources be based on a consideration of various factors, including risk, complexity, and price. The task force also suggested that General Services consider delegating the legal review, if appropriate, to state departments that have in-house counsel trained in contract law. We agree that delegating this responsibility in some situations may be appropriate. Ultimately, however, General Services

should be held accountable for high-risk transactions. Therefore, we believe Legal Services should perform the final review of all contracts General Services is required by law to review.

Establishing a Stakeholder Advisory Council Should Facilitate Agreement Between the State and Private Industry on Contract Terms

The task force identified the importance of the State reaching agreement with private industry on a set of contract terms and conditions that protects the State's interest while preserving a competitive marketplace. Industry representatives have commented that the State's contract terms may be unduly restrictive when compared with federal and commercial standards and may also be restricting competition. In response, the task force recommended that General Services confer with industry representatives to improve the model contract provisions. These deliberations should include a consideration of best practices used by other public and private sector organizations.

The task force further suggested that General Services continue its efforts to facilitate industry and state stakeholder participation in the continuous improvement of the general contracting and procurement processes. Currently, General Services' Small Business Council—a collaborative effort between state officials, private businesses, and local officials—addresses policy and procedural issues. Additionally, General Services' State Contracting Advisory Network—a group of state contracting officials that meets quarterly to discuss pertinent contracting issues—acts as a mechanism to disseminate information about contracting policies and procedures. However successful these efforts may be, several of the departments we surveyed expressed the need for increased communication between their purchasing personnel and General Services. Therefore, we believe General Services should ensure that state purchasing personnel are adequately represented in its efforts to improve the contracting and procurement process and that information be effectively disseminated to state departments. Further, General Services should facilitate periodic meetings among state departments to discuss various procurement issues and exchange ideas and solutions with other departments.

General Services should ensure that state purchasing personnel are adequately represented in its efforts to improve the State's contracting and procurement process.

The task force recommended that after 12 months, General Services evaluate the effectiveness of its efforts to implement all the task force's short-term recommendations and prepare a report to the governor on the status of those efforts. We agree with this recommendation.

RECOMMENDATIONS

To emphasize the need for departments to obtain the best prices when using the CMAS program, the Legislature should consider revising existing CMAS statutes to include language that requires departments to obtain at least three price quotes before making CMAS purchases. It should also consider amending the law to specifically require General Services to review state departments' IT purchases every three years as it now is required to review non-IT purchases.

To further improve the State's contracting and procurement processes, General Services should continue its efforts to implement the reforms recommended by the task force.

Additionally, General Services should take the following actions:

- Develop a standard form that departments must complete to document their quotes from CMAS vendors. The form should also be used to document each department's basis for determining best value when cost is not the determining factor in the purchase.

- Consider adopting maximum order-quantity levels that would prompt departments to seek additional discounts from CMAS vendors.

- Strengthen its procedures for reviewing the processes used by government entities awarding base contracts.

- Facilitate meetings with Finance and departmental internal auditors to revise existing audit procedures to include CMAS and noncompetitively bid contracts. General Services should also consider limiting its audits and reviews of some departments to an evaluation of the adequacy of the departments' most recent internal reviews.

- Develop training classes that provide comprehensive coverage of noncompetitively bid contracts and CMAS purchasing and require mandatory attendance by all state purchasing personnel. General Services should also evaluate the curriculum for

its existing training classes and vendor seminars and consider implementing short-term changes until a more comprehensive program can be developed.

- Work with departments to establish a process for consistently reconciling their purchasing information with invoices and reports prepared by General Services. General Services should also issue instructions to state departments reinforcing the importance of reporting all contracting and procurement transactions.

- Explore the possibility of including copies of all vendor contracts on the CMAS Web site.

- Require Legal Services to perform a final review of all high-risk contracts.

- Ensure that all state purchasing personnel are represented in its efforts to improve the contracting and procurement processes and that information is effectively disseminated to state departments. General Services should also facilitate periodic meetings with state departments to discuss various procurement issues and exchange ideas and solutions with other departments.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

Elaine M. Howle

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APPENDIX A

Comparison of Selected Multiple-Award Schedules Programs From Other Government Entities

From our review of 18 states that we believed might have multiple-award schedules programs as a contracting and procurement option, we selected four that offered such programs to procurement staff for at least some purchases. For example, Washington uses its multiple-award schedules program only for personal services purchases, and Texas does not use its program for purchasing information technology goods. We then selected some elements of the California Multiple Award Schedules (CMAS) program that the Governor's Task Force on Contracting and Procurement Review (task force) had addressed and compared them with the programs in other states. We included the federal multiple-award schedules (FMAS) program because some states base their multiple-award contracts on FMAS contracts. In addition, we included the Merced County Fast Open Contracts Utilization Services (FOCUS) program in our comparison because it is the most frequently used provider of non-FMAS base contracts by vendors seeking to obtain CMAS contracts.

Table A.1 on the following pages show the results of our comparisons. In general, among the states and other nonfederal government entities, we found only Texas has a multiple-award schedules program comparable to the CMAS program. In fact, the Texas program has more stringent requirements than does the California program for some elements, such as required procurement certification for its contracting personnel and increased online capabilities. However, by implementing the task force recommendations, the State would address these issues.

TABLE A.1

Comparison of Selected Multiple-Award Schedules Programs From Other Government Entities

Government Entity	Multiple-Award Schedules Program	Price Quotes	Certification Program	Vendor Qualifications	Data Integration	Documentation	Audits/Reviews
Federal Government	Yes	Purchases under $2,500 —none; between $2,500 and the maximum order limit—review 3 price lists or solicit 3 quotes for services that require a statement of work; over the maximum —additional price lists must be reviewed or additional quotes must be solicited. Also must seek additional price reductions.	Yes—required for some contract officer classifications.	Vendors negotiate with federal contract officers to be approved for multiple-award schedule lists. Historical data and other contracts are reviewed. Contracting officers also analyze information on vendors obtained through market research.	Provides online shopping and ordering system.	Purchase documentation is the minimum required; additional documentation is dependent on type and size of purchase.	Audits conducted by the federal General Accounting Office and Office of the Inspector General as appropriate.
California	Yes	The task force recommended that General Services adopt a policy that requires departments to continue to obtain a minimum of 3 price quotes, if possible; if less than 3, the method for obtaining quotes must be documented.	The task force recommended that General Services develop and deliver a comprehensive training and certification program for state contracting and procurement officials.	The task force recommended that General Services develop written standards and criteria that will apply to CMAS agreements established with vendors that do not hold FMAS contracts.	The task force recommended that General Services implement both an integrated system for tracking goods, services, and IT contracts and procurements, and a comprehensive electronic procurement system that includes public access to contract and procurement opportunities, product/pricing comparisons, and links to online policies and training.	The task force did not provide specific recommendations on documentation; currently General Services requires that vendor price quotes, term contract, and best value criteria/determination must be in the departments' files for each CMAS purchase.	The task force recommended that General Services perform random audits or compliance reviews of departments' contracting and procurement transactions. It also recommended that General Services establish protocols for departments with internal auditors to conduct audits.
Texas	Yes, but not for purchases of IT goods.	No set number required, but generally 3 quotes are expected to be obtained.	Yes—required	Vendors must already have a GSA contract or one from another state. Once approved, vendor training is required and vendor remains on probation for 6 months.	Online ability to search by vendor or purchase category; provides list of multiple-award schedule vendors and list of approved goods and services online; ability to enter purchasing data directly to control agency data system.	Vendor price quotes, term contract, and best value criteria/determination must be in the purchase file.	Oversight agency conducts periodic reviews for compliance.
New York	Yes	No set number required; if less than 3, agency may be required to document vendors solicited.	No	Vendors must complete survey before registering.	Online ability to search by vendor or purchase category; some contracts online.	Price quote documentation is the minimum required; best value determination/rationale must be documented if used.	Contracts over $15,000 are pre-audited by the Office of the State Controller; there is no formal program for vendor compliance review.
Pennsylvania	Yes	No minimum required.	No	Vendors must meet the criteria in the bid solicitation and not make exceptions to the contract terms and conditions.	All contracts are online and some online purchasing is possible.	Usually, documentation beyond the purchase order is not required.	Each agency's comptroller may monitor purchases for compliance with contracting practices. Vendors are occasionally reviewed.

Government Entity	Multiple-Award Schedules Program	Price Quotes	Certification Program	Vendor Qualifications	Data Integration	Documentation	Audits/Reviews
Washington State	Yes, limited to personal services purchases.	Interest and availability statements sent to 5 vendors for purchases under $20,000 and to all appropriate vendors for purchases over $20,000.	No, but vendors and purchasers may be required to have training on the multiple-award schedules process before they can participate.	Vendors are pre-qualified under a request for proposal evaluation and award process.	Vendor contracts and associated catalogs are online.	Agencies must document work order, evaluation criteria and worksheet, and any conflict-of-interest statements.	Audits are conducted by the state auditor and the oversight agency as appropriate.
Merced County—FOCUS	Yes	No set number required, but solicitations usually sent to at least 3 vendors for purchases greater than $5,000.	No	Vendor must meet evaluation crtieria included in each specific request for proposal announced by FOCUS.	Information on the FOCUS program and vendors is online. Departments must call vendors for vendor information.	County does not require any additional documentation when a FOCUS vendor is used.	Reviews certain FOCUS purchases for pricing structure and competitiveness.

Source: Discussions with procurement personnel and review of procurement and contracting documents.

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APPENDIX B

Recommendations From the August 2002 Governor's Task Force on Contracting and Procurement Review

In May 2002, the governor issued an Executive Order creating the Governor's Task Force on Contracting and Procurement Review (task force) to examine the State's contracting and procurement procedures and recommend any statutory, regulatory, or administrative changes necessary to ensure that departments use open and competitive bidding to the greatest extent possible in awarding state contracts. In addition, the governor asked the task force to recommend any statutory or regulatory changes to ensure adequate oversight of the procurement processes by state agencies and departments. The task force completed its directive from the governor in August 2002, recommending purchasing reforms, subsequently approved by the governor, that call for significant changes in the State's contracting and procurement procedures.

Table B.1 on the following pages list the task force recommendations as well as the approach the Department of General Services (General Services) has indicated it will use to implement the recommendations and its timeline for doing so.

TABLE B.1

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
1. General Services shall broaden the scope of the Quality Assurance Program so that state agencies conducting any state procurement are required to do so under authority granted by General Services, including orders placed with contractors holding leveraged procurement instruments established by General Services such as the California Multiple Award Schedules (CMAS) program and master agreements.	General Services issued a memo to all departments on January 31, 2003, announcing the inclusion of leveraged procurement instruments such as the CMAS program, master service agreements, Statewide Commodity Contracts, and State Price Schedules in its Quality Assurance Program. To fully implement this recommendation, General Services is developing training modules on leveraged procurements that will be included in the General Services' Training and Certification Program for Procurement Professionals (see Recommendation 8). Standards and assessment tools are being developed (see Recommendation 6) and these will be used in conjunction with regular compliance reviews to establish purchasing authority dollar levels commensurate with criteria established for compliance. General Services is also revising its Purchasing Authority Manual to include chapters regarding use of leveraged procurement instruments, which will contain instructions on conducting leveraged procurements for state agencies.
2. General Services shall adopt a policy that prohibits the acquisition of large-scale information technology (IT) system integration projects through the use of CMAS or master agreement orders, unless otherwise approved as a part of a feasibility study report.	General Services met with the Department of Finance to develop criteria to be used to redefine "large-scale system integration" projects. This criteria is being incorporated into a Management Memo that has a target release date of late February 2003. The acquisition process will actually be approved via the Information Technology Procurement Plan, which will be reflected in the Management Memo.
3. Specifically, with respect to the CMAS program, state agencies shall be required to follow the Management Memo 02-19 requirements to continue to solicit and obtain three price quotations, including at least one certified small business CMAS contractor, before placing an order. In addition, no single order should exceed $500,000.	Management Memo 02-19 established the policy. CMAS program materials are currently being updated to reflect the requirements of the Management Memo. The update will be disseminated via General Services' Procurement Division's Web page in mid-March 2003.
4. General Services shall develop written standards and criteria that will apply to any CMAS agreements established with vendors that do not hold federal General Services Administration (GSA) supply schedules.	**Vendors Without Base Agreements:** General Services has written standards and criteria that apply to any CMAS agreements established for vendors that do not hold federal GSA agreements, or nonfederal multiple award agreements. **Nonfederal-Based Agreements:** General Services revised its written standards and criteria for CMAS agreements that are based on nonfederal GSA supply schedules to: • Allow negotiated products, services, and prices only if the federal government approves them. • Require that the award of the nonfederal GSA supply schedule be based on minimum product and/or service requirements. Evidence of multiple award and competitive bid or cost-compared pricing will continue to be required. In addition, General Services has, among other things, initiated a partnership with the vendor community (Information Technology Association of America) to formulate additional CMAS reforms.

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
5. General Services shall perform random audits or compliance reviews of state agencies' contracting and procurement transactions executed under authority granted by General Services, including services contracts. General Services should also establish protocols to enable state agencies that have internal auditors to conduct audits and report the results to General Services.	To implement this recommendation, General Services doubled the number of staff dedicated to performing compliance reviews and overhauled the database of agencies to be reviewed to include those that have been purchasing without delegation* using leveraged procurement instruments (Recommendation 1). Additionally, General Services refined its compliance criteria and developed templates for the compliance review reports. New review staff have been immersed in intensive training and will begin on-site training at a state agency in February 2003. The on-site training will cover both goods and IT acquisitions. With the addition of the leveraged procurements into the purchasing authority program, staff will develop review criteria and increase review accountability and reporting to cover these issues. The purchasing authority and quality assurance manager is working with General Services' external auditors to define protocols for agencies' internal auditors and to define the requirements for review of non-IT services contracts.
6. General Services shall establish consistent standards tied to dollar thresholds that must be met for a state agency to be granted higher levels of procurement authority. These standards should take into consideration training, certification, demonstration of competency, and demonstrated capability to conduct self-audit or assessment through various means.	General Services is addressing the recommendation as part of its revision of the Purchasing Authority Manual. The revised manual will include a revised request for purchasing authority form that will include the standards. The first segment of the revised manual is scheduled for release June 30, 2003. Implementation of this recommendation will interface with Recommendations 8 and 19.
7. General Services shall develop a uniform set of policies, procedures, and processes to apply to all state contracts and procurements to ensure that the outcomes are consistent and fair, and foster competition. As a part of the recommendation, General Services should undertake an initiative to align the laws governing contracting and procurement of goods, services, and IT, including the award-protest processes.	General Services recognizes that the laws and rules governing state acquisitions may be inconsistent and ambiguous. The current organizational structure of the contracting and procurement functions may lead to inefficiencies or duplication of effort. To clarify the current method for conducting the acquisition of goods and services and improve its current methodologies, General Services is in the process of retaining a consulting firm to assist in implementing this recommendation. The request for proposal has been issued, proposals have been received, and proposal evaluations are now underway. It is anticipated that a contract will be awarded in late February 2003. The selected contractor is to perform a substantial review of the statutes, codes, and regulations relating to state acquisitions; federal requirements imposed on the State; and the State Administrative Manual, the California Acquisition Manual, the State Contracting Manual, and other relevant documents. The selected contractor will also make recommendations to simplify and promote uniformity among all state procurement and contracting approaches. In addition, the contractor will examine the organizational structure for policy development and implementation and provide recommendations for improvements. The contractor will also conduct an assessment of the internal structure and responsibilities for review and approval of individual contracting and procurement actions, and make recommendations to improve the procedures. General Services expects work on the contract to be completed by the end of July 2003. *continued on the next page*

* Purchasing delegation is the authority to procure goods or IT goods and services with a value over $100. General Services' Procurement Division makes these delegations to state departments that have demonstrated the capability to make purchases that adhere to state statute and policy. The Procurement Division monitors the delegation holders' purchasing program through purchasing program compliance and quality review.

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
8. General Services shall develop and deliver a comprehensive training and certification program for state contracting and procurement officials. Signature authority of individuals at state agencies should be linked to the level of training, experience, and proficiency achieved, as should the procurement authority of each state agency.	The first step in developing a comprehensive training program is to assess the needs of those to be trained. To do this, General Services entered into an interagency agreement with the Center for Management and Organization Development, California State University, Northridge (CSUN) to (a) identify the knowledge, skills, and abilities (i.e., competencies) required by individuals with procurement and contracting responsibilities, (b) conduct a needs assessment based on these competencies, and (c) recommend a comprehensive training program designed to enhance individual competencies. The training program would ultimately link successful completion of the program (including passing tests) to certification and to granting agency purchasing authority. To identify the knowledge, skills, and abilities comprising the procurement official's job, two focus groups were established from among the "best" at their jobs and represented agencies throughout the State. Using the results of the focus groups, a questionnaire was designed and made available online via the Internet and also mailed to these individuals. The results provide invaluable insight into the specific training needs of the group. It is significant to note that managers and journey-level procurement officers agreed strongly on the training needs of those working in the procurement field. Respondents indicated that procurement staff at all levels need foundation training in areas such as the emergency acquisition process, noncompetitive acquisitions, and file documentation. Based on the findings of the task force and the survey results, General Services will be phasing in a series of courses in state acquisitions over the next six months. The first classes offered will be Acquisition Ethics and Leveraged Procurements in April 2003. General Services is developing a basic program that will lead to a certificate for procurement and contracting personnel. A certification will be linked to an agency's purchasing authority. General Services expects to offer the first course in this series at the beginning of fiscal year 2003–04. In addition, General Services is: • Categorizing the survey findings for additional programs at the intermediate and advanced levels. It will identify specialized topics, based on the survey findings, for career development workshops. • Discussing with legal staff an appropriate means of delivering training on high-risk contracts. • Exploring the possibility of providing selected programs online. • Discussing with both the Department of Personnel Administration (DPA) and the CSUN (a) the best means for registering and tracking participants, (b) techniques for evaluation and testing, and (c) the award of professional development certificates.
9. General Services shall adopt clear standards of conduct for contracting and procurement officials. Violations of the standards should be subject to disciplinary action.	California Government Code, sections 19572 et. seq. and 19990 specify the current statutory grounds for discipline in the state civil service system. Though these particular sections may encompass some of the commonly occurring defalcations involved in state contracting abuses, it is their initial assessment that a code of conduct is needed to set more specific criteria and standards for those involved in state contracting. This will provide a firm basis for discipline under the more general statutory sections and will also provide clear warning regarding prohibited activities for both civil servants and exempt employees. Because of the many required procedures involved in civil service discipline (e.g., progressive discipline), stakeholders (DPA and unions) need to be involved in development of procurement conduct standards. Meeting with these parties was to begin the second week in February 2003. These ethical standards will be part of the core curriculum in the contracting training to be conducted by General Services. General Services has begun the process of collecting standards of conduct from other jurisdictions. The completion date for this activity should be June 2003.

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
10. General Services shall adopt clear standards of conduct for vendors that do business with the State. Violators of the standards should be subject to suspension or debarment.	General Services is currently evaluating best practices by researching the federal government and other states. It will then evaluate current statutes and regulations to see where gaps exist and changes need to be made, determine if the appeal process can be used in the administrative process, establish criteria for authority and process, and establish criteria for standards of conduct. General Services characterized the implementation of this recommendation as long term.
11. General Services shall meet with industry representatives and state stakeholders to develop model contract terms and conditions that will protect the State's interests and mitigate risk for all parties.	General Services implemented the first phase of this recommendation in January 2003 when it posted new model contract language on the Procurement Division Web site. A letter signed by the department director will go out soon, requiring agencies to use the new provisions in all bids and disallowing modifications without prior approval from General Services. General Services met with the Information Technology Association of America, an organization of IT industry representatives, and with both state and private counsel. As a result, General Services made significant revisions to the IT General Provisions and IT purchasing modules now posted on the Procurement Division Web site. IT General Provisions and non-IT Commodities General Provisions were separated into two documents. The IT General Provisions were modified as follows: • The Limitation of Liability clause was revised to limit a contractor's liability to two times the purchase price, and the purchase price was defined. • The Indemnification clause was changed to require the State to notify the contractor of any claim and to give the contractor control over the defense of any action on a claim, subject to certain conditions. • The Rights in Data clause was modified to give the State "Government Purpose Rights" to any work product prepared by the contractor. The contractor retains property rights. • The Patent, Copyright, and Trade Secret Indemnity clause was changed to clarify the language. These changes to the IT General Provisions bring the State's contract language more in line with industry standards and with what other states are doing. It is expected that the revisions will result in more businesses bidding on contracts and ultimately lower costs to the State for IT projects.
12. General Services shall facilitate industry and state stakeholder participation in continuous improvement of contracting and procurement processes through the establishment of advisory councils.	General Services' Procurement Division recognizes that customer input is vital to the successful implementation and continuous improvement of procurement and contracting processes. In implementing this recommendation, General Services has established working advisory groups comprising industry and state stakeholders. For industry stakeholder participation, several supplier participants were selected based on recommendations from the Procurement Division's acquisition management team and the supplier community. The industry working group will provide guidance and expertise on many of the reform initiatives while providing their perspective on state government contracting practices used to obtain an array of goods and services. For state stakeholder participation, existing focus groups established by other initiatives, as well as the General Services' Partnership Council, have been called upon to provide input on procurement and contracting processes. The state working group is composed of top-level executives from throughout state government. These executives will lend their expertise to the Procurement Division in several areas. Both groups are being asked to act as sounding boards as General Services brings forward major issues relating to procurement reform recommendations. Their input will be collected and disseminated to various management teams to resolve issues and assist in implementation. These working groups will be available on an ongoing basis to provide their input on issues as they arise.

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Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
13. General Services shall implement an integrated system for tracking contracts and procurements for goods and services executed by state agencies.	The first phase in implementing this recommendation was completed when General Services launched a pilot contract and procurement registration system with eight state agencies in December 2002. The system captures data such as agency name, contract type, amount, term, and amendment information. This system was to be implemented on February 18, 2003. General Services will then begin working on the tracking component of the project. This Internet-based system will capture detailed information on contracts and procurements and will provide General Services' management with data it needs to oversee the statewide contract and procurement functions.
14. General Services shall implement a comprehensive electronic procurement (eProcurement) system for all state contract and procurement transactions, to include the following: • Public access to contracting and procurement opportunities, as well as historical information. • Links to online policies and procedures and decision support system, and online training. • Product and pricing comparisons. • Rules-based approval routing so that no transaction can be issued without appropriate approvals. • Reverse auctions, in which the requirement is advertised and bids are placed online. The prices can be seen but the vendors names remain confidential until the bidding (auction) is closed. • Data capture for all transactions, and generation of required reports, eliminating redundant reporting wherever possible.	General Services established the successful CAL-Buy Phase I project and is currently developing the requirements for Phase II of the eProcurement initiative. The CAL-Buy Phase I eProcurement system, which was implemented in March 2001, currently automates purchasing from over 250 statewide commodity contracts by over 300 buyers in five state agencies (General Services, Corrections, Transportation, Highway Patrol, and Youth Authority), and seven local governments. CAL-Buy successfully reduced the procurement cycle time, saving the State both time and money. CAL-Buy implemented several features for increased accountability, including automated workflow for approval of orders based on dollar thresholds, enforcement of contract expiration dates, and a detailed audit trail of all activity related to purchases. CAL-Buy made ordering from certified small businesses just as easy as from large ones, and approximately 46 percent of the $38 million spent to date has been awarded to small businesses. While CAL-Buy is in maintenance and operations mode, General Services is analyzing the options for moving forward with Phase II and this procurement reform recommendation. It is General Services' intention that Phase II will include automating more contracts such as the CMAS program and master service agreements and adding functionality for contract management and one-time buys. In response to the fiscal challenges currently facing the State, it is prudent to first implement eProcurement within General Services, and later as a roll out to other state agencies. By starting with General Services, the eProcurement system will be fully tested, features utilized and enhanced, and risk minimized prior to moving out to the rest of state government. This approach will help to maximize the success of eProcurement and fully address the requirements within this reform recommendation.

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
15. General Services shall ensure active legal participation in all high-risk contracting or procurement transactions. At a minimum, the following types of transactions should be identified as high risk: • All large-scale IT system integration projects. • Transactions in which there is a history of protest or litigation for this or like contracts. • Public safety. • Acquisition of unique or specially manufactured goods or services. • Complex projects. • Proposed deviations from standard processes or terms and conditions (e.g., advance payments, modification to warranty, indemnity, or liability language, etc.). • High-profile transactions. • Potential conflicts of interest. • Hazardous activity. • Federal matching funds. • Goods and IT goods contracts over $500,000, IT services contracts over $200,000, and non-IT services contracts over $50,000.	Managers from General Services' Office of Legal Services (Legal Services) and the Procurement Division have established an implementation team to work out the process-related details involved in providing expanded legal services for assistance in the development and review of IT and commodity contracts, especially those identified as high risk. This involves the identification of roles and responsibilities, a roll-out plan for state agencies, and identifying opportunities to optimize contracting and control processes. Legal Services has dedicated additional staff for expanded legal services and has formed an IT team to provide in-depth analysis of contracts and contract-related issues. In addition, it has established regular office hours in the Procurement Division in order to be more accessible to Procurement Division staff. Delegation of review policy development is pending a determination of contract proficiency levels in other departmental legal staffs.
16. General Services shall develop and deliver training to state agencies on conducting an initial, high-risk review of contract and procurement transactions, using criteria established by General Services. State agencies shall forward to General Services for review and approval contracts that meet any of the high-risk criteria.	For the initial phase of this recommendation, General Services has developed a list of high-risk transactions that require review and approval by General Services' legal staff. Included in this list are contracts for goods over $500,000, IT services over $200,000, and combination contracts of IT goods and services over $200,000. These are categories of contracts that have not been subject to legal review in the past. General Services is preparing a Management Memo to announce this policy. Training in high-risk contracts will be covered in General Services' Training and Certification Program for procurement professionals (Recommendation 8). Delegation of high-risk contract review to client agencies will be considered after General Services has had an opportunity to evaluate these contracts and determine which are appropriate for delegation.
17. General Services shall develop electronically based model contract templates with standard terms and conditions for use by state agencies to expedite review processes for low-risk contracts.	The completion of Recommendation 11 was the first step in the implementation of this recommendation. To improve the model contract provisions, General Services' staff met with the Information Technology Association of America, an industry group, and agreed on the new model contract provisions that were posted on General Services' Web site in January 2003. Completion of that task provides one part of the foundation legal work necessary for the development of the model contract templates needed for this recommendation. General Services will continue to review and revise model contract language in preparation for the development of model contract templates.

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Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
18. General Services shall require each state agency to designate official(s) responsible for all contracting and procurement within the state agency.	In mid-November, General Services sent a memo to department directors and agency secretaries requesting their cooperation in identifying a procurement and contracting officer. General Services completed a roster of procurement and contracting officers on January 31, 2003.
19. General Services shall authorize individual signature authority for contracting and procurement officials, based on position held, experience, training, and certification.	General Services researched current requirements relating to contract signature authority in California statutes and surveyed state agencies for procedures currently in effect. They also contacted other states to determine current methodologies for granting contract signature authority. General Services also surveyed other states and the federal government for best practice approaches. Policy is being developed that will interface with Recommendations 6 and 8.
20. After six months, and again after 12 months, General Services shall evaluate the effectiveness of its efforts to implement all short-term recommendations and prepare a report to the governor on the status of those efforts.	General Services characterized the implementation of Recommendations 1, 2, 3, 4, 5, 11, 12, 13, 15, 16, 18, and 19 as short term and included the evaluation of its effectiveness in implementing the recommendations in its six-month report to the governor on February 14, 2003.

Sources: *Recommendations:* Executive Summary, The Governor's Task Force on Contracting and Procurement Review Report, August 2002. *Approach and Implementation Status*: Department of General Services' Report to the Governor on the Implementation of the Recommendations of the Task Force on Contracting and Procurement Review, February 14, 2003.

APPENDIX C

History of Maximum Purchase Limits for the California Multiple Award Schedules Program

Table C.1 on the following page shows the dollar thresholds and general guidelines for purchases departments made using the California Multiple Award Schedules (CMAS) program established by the governor's May 20, 2002, Executive Order on contracting practices as well as the thresholds and guidelines established before and after the order. The dollar limits for information technology (IT) goods and services and non-IT services were lowered by the Executive Order but went back to their previous levels during the interim period between May and August 2002, when the Governor's Task Force on Contracting and Procurement Review made its recommendations. The most significant changes to CMAS purchasing practices during this interim period were stricter requirements for departmental use of the CMAS program and increased departmental oversight of CMAS purchases. Since August 20, thresholds have remained constant, but restrictions on exemptions have increased. Specifically, General Services no longer allows departments to use CMAS contracts for any purchases that exceed the dollar thresholds. By eliminating exemptions to the CMAS dollar thresholds, General Services compels departments to use alternative procurement methods, greatly reducing the risk that the CMAS program is used inappropriately.

TABLE C.1

History of CMAS Maximum Purchase Limits

Date	IT Goods and Services	Non-IT Goods	Non-IT Services
Pre-Executive Order			
Before February 2001	$500,000	$100,000	Not Allowed
February 2001 through May 19, 2002	500,000	100,000	$250,000
	Exemptions to limits had to be approved by requesting department director and General Services. After February 2001 change, purchases of non-IT services greater than $35,000 required General Services' approval.		
	Until January 2002, comparing contracts and offers was strongly encouraged but not required. Beginning in January 2002, guidance was ambiguous about whether comparing contracts and offers was required.		
Executive Order and Interim Guidelines			
May 20, 2002, Executive Order	$100,000	$100,000	$100,000
	Any purchase over $100,000 must be competitively bid, with some exceptions.		
May 28 through August 19, 2002, interim guidelines	500,000	100,000	250,000
	No exemptions allowed. Purchases of non-IT services over $35,000 had to be approved by General Services. Some additional requirements implemented for purchases between $100,000 and the $250,000 and $500,000 maximums.		
	Three price quotes required with some exceptions.		
Post-Executive Order and Formal Guidelines			
August 20, 2002, to present	$500,000	$100,000	$250,000
	Three price quotes required with some exceptions.		
August 20, 2002, through January 20, 2003	**No exemptions allowed.** Purchases of IT goods and services exceeding $250,000 had to be approved by department director or the next highest ranking official. Purchases of non-IT services **exceeding $50,000** must be approved by General Services.		
January 21, 2003, to present	**No exemptions allowed.** Purchases of IT goods and services exceeding $250,000 **must also be approved by the agency secretary.** Purchases of non-IT services exceeding $50,000 must be approved by General Services.		

Agency's comments provided as text only.

State and Consumer Services Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814

March 17, 2003

Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Ms. Howle:

RE: STATEWIDE PROCUREMENT PRACTICES: PROPOSED REFORMS SHOULD HELP SAFEGUARD STATE RESOURCES, BUT THE POTENTIAL FOR MISUSE REMAINS

We have reviewed the draft report entitled "*Statewide Procurement Practices: Proposed Reform Should Help Safeguard State Resources, But the Potential for Misuse Remains,*" and offer the following comments.

The thrust of your report findings is consistent with the conclusions of the Governor's Task Force on Contracting and Procurement Review. Efforts to implement the recommendations of the task force and to reform the system are underway. As noted in your report, the Governor's May 20, 2002, executive order immediately resulted in departmental compliance with Department of General Services (DGS) requirements for obtaining best value. The 92% compliance rate contained in your report reflects a tremendous improvement. By further strengthening controls, we expect full compliance by all state agencies.

For nearly a year now, DGS has devoted maximum effort to addressing the kinds of concerns that are highlighted in this report. These efforts include:

- Issuing Management Memos beginning last May that provide stringent guidelines for agencies to obtain goods and services through California Multiple Award Schedule (CMAS), master services agreements, and non-competitively bid contract acquisitions methods;
- Staffing the Governor's Task Force on Contracting and Procurement Review and developing recommendations to improve accountability and adherence to requirements and procedures;
- Providing training to more than 800 individuals representing more than 100 state agencies on the Governor's Executive Order and the Management Memos;
- Requiring legal review of all "high risk" contracts, including complex information technology projects, mission critical programs, and issues related to public health and safety;

- Surveying approximately 4,000 procurement and contracting officials to assess needs and developing comprehensive training programs to meet those needs;
- Launching an internet-based pilot contract and procurement registration system that will one day help the state to track all major contracting activity; and
- Bringing leveraged procurement instruments, such as CMAS, statewide commodity contracts, master agreements, and state price schedules under the DGS Procurement Division's Quality Assurance Program.

We take the concerns and deficiencies identified in your comprehensive audit extremely seriously and have been working hard to improve the procurement process. Indeed, your report recognizes our significant progress. I have directed DGS to implement your recommendations with all deliberate speed. The aggressive procurement reform efforts that have been and are currently underway, combined with the recommendations in this report, should help to prevent similar problems from arising in the future and ensure that state procurement is characterized by the highest level of accountability, competitiveness, planning, and training.

We are committed to working with BSA and the Legislature to ensure that appropriate reforms are implemented fully and that the crucial lessons of this important audit are understood by all state agencies and departments now and in the future.

Enclosed is the response prepared by the Department of General Services.

Sincerely,

(Signed by: Aileen Adams)

Aileen Adams
Secretary

Enclosures

Department of General Services

Date: March 14, 2003 File No.: 2002-112

To: Aileen Adams, Secretary
State and Consumer Services Agency
915 Capitol Mall, Room 200
Sacramento, CA 95814

From: **Department of General Services**
Executive Office

Subject: RESPONSE TO BUREAU OF STATE AUDITS' REPORT NO. 2002-112– "STATEWIDE PROCUREMENT PRACTICES: PROPOSED REFORMS SHOULD HELP SAFEGUARD STATE RESOURCES, BUT THE POTENTIAL FOR MISUSE REMAINS"

Thank you for the opportunity to respond to the Bureau of State Audits' (BSA) Report No. 2002-112 which addresses recommendations to the Department of General Services (DGS). The following response addresses each of the recommendations.

OVERVIEW OF THE REPORT

The DGS has reviewed the findings, conclusions and recommendations presented in Report No. 2002-112. The DGS will take appropriate actions to address the recommendations.

Overall, the DGS is pleased that the BSA concluded that the proposed changes of the Governor's Task Force on Contracting and Procurement Review (Task Force) should address most of the weaknesses identified during the audit. In fact, if properly implemented, the BSA determined that the changes would place stricter requirements on the use of leveraged contracts by California departments than those required by several other states and the federal government.

The DGS is also pleased that, although still too early to provide a complete assessment, the BSA found that departments were initially operating in compliance with the new requirements governing the comparison of prices and documentation of best value efforts when using the California Multiple Award Schedules (CMAS) acquisition program. In fact, as discussed in Chapter 1 of the report, the BSA found a significant degree of compliance even though the transactions reviewed during the audit occurred within a few months of the Governor's May 2002 issuance of an Executive Order that placed additional restrictions on the use of CMAS and the DGS' issuance of interim guidelines governing those procurements. For example, within the nine sampled departments, the BSA found that price quotes were not obtained in only 2 of 25 instances after the date of the new requirements.

Over the last year, the Governor has taken a number of significant actions to ensure that the state's contracting and procurement programs are conducted in both an efficient manner and through the use of procedures that assure the highest integrity. These actions included the issuance of

Executive Order D-55-02, dated May 20, 2002. This order required that a comprehensive review of current state processes be undertaken to identify necessary safeguards and areas for improvement with procurements awarded without competitive bidding or through the use of a CMAS contract or a master service agreement. The review was conducted by the three members of the previously discussed Task Force: Department of Developmental Services Director Cliff Allenby, Los Angeles County Chief Administrative Officer David Janssen, and Chief Deputy Director of Finance Annette Porini. The Task Force was directed to review the state's contracting and procurement procedures and recommend any statutory, regulatory or administrative changes necessary to ensure that open and competitive bidding is utilized to the greatest extent possible in awarding state contracts.

The BSA's positive findings related to the proposed changes in the procurement function reflect favorably on the activities of the Task Force and the expertise of the DGS' staff in identifying, recommending and implementing changes to the state's contracting and procurement processes. DGS Procurement Division (PD) and Office of Legal Services (OLS) personnel served as the primary staff to the Task Force and, after obtaining stakeholder input from numerous outreach activities, developed most of the recommendations that were ultimately adapted for implementation. Currently, the DGS has a lead assigned to each of the Task Force's 19 recommendations who is actively working with individual teams of 10 to 15 members to implement the proposed actions. To date, DGS' procurement and legal staff have spent over 13,000 hours on the state's procurement reform efforts.

The DGS has taken or is taking numerous significant actions as part of the state's procurement reform efforts. These actions include the:

- Implementing of an outreach and education program that has included a series of customer forums to ensure that state agencies are fully aware of the state's new procurement requirements. These forums have been attended by more than 800 individuals representing over 100 state agencies since they began in June 2002.

- Implementing of an Internet-based Contract Registration System whereby state agencies will be required to report all purchases over $5,000. This system will capture detailed information on contracts and procurements and provide DGS' management with the data it needs to oversee the state's contracting and procurement functions. The first phase of the project began in December 2002 as a pilot at eight state agencies. The system went live at those agencies in mid-February and is planned for statewide implementation in July 2003.

- In conjunction with the California State University Northridge's Center for Management and Organization Development, conducting of an extensive survey of individuals involved in state purchasing activities. Based on the data obtained from the survey, the DGS is phasing-in a series of new state acquisition courses over the next six months. The first classes are planned to be offered in April 2003 and will deal with acquisition ethics and leveraged procurements. Ultimately, a course curriculum will be offered that, upon completion, will result in a certification being earned by a student. Subsequently, the signature authority of individuals at departments will be linked to the level of training, experience and proficiency achieved. The contracting and purchasing authority granted to each department will also be tied to these same criteria. The DGS expects to offer the first course in the certification series at the beginning of the 2003/04 fiscal year.

- Directing of state agencies to increase competition and accountability through a number of new mandates including a requirement for the solicitation of three bids, enforcement of a $500,000 limit on all CMAS transactions, and Agency sign-off requirements on orders exceeding $250,000. Even before the issuance of the Task Force's report, the DGS had issued a management memo to state agencies placing more stringent requirements on the use of CMAS, master agreements (MA), and non-competitively bid contracts.
- Implementing of a process that requires the completion of a non-competitively bid (NCB) contract justification form for non-competitive information technology (IT) and non-IT goods and services acquisitions of $5,000 or more. The form requires the approval of the department director and Agency Secretary or immediate next ranking official and, depending on dollar amount, the DGS and Department of Finance directors or designees. The NCB form requires thorough explanations to be provided on why the good or service requested is restricted to one supplier and how the proposed price was determined to be fair and reasonable.
- Revising of policies to provide that state agencies not be allowed to use CMAS contracts, MAs, and other contracts that leverage the state's buying power without first being granted purchasing authority from the DGS.
- Developing of a new contract and procurement review process whereby state agencies doing high risk procurements undergo an assessment review at the early stages of the contracting process. The DGS will determine if a contract needs developmental support, technical support, and/or legal support and will assure that the type of review received is appropriate for the risk involved.
- Increasing of the number of staff dedicated to performing compliance reviews of state agencies procurement activities.
- In conjunction with industry representatives, negotiating of new model contract provisions for IT acquisitions that are more in line with commercial standards while still protecting the state's interests.
- Developing and maintaining of a roster of state procurement and contracting officers. These individuals have been designated by their department director or agency head as responsible for all contracting and procurement activity in their agency.

In summary, the BSA concludes that departments have often ignored DGS requirements, that the DGS contributed to this situation through weaknesses in its oversight and administration activities, and that the Task Force's proposed changes should address most of the system weaknesses noted during the audit. Further, in Chapter 5 of the report, the BSA recommends a number of additional steps that the DGS should take to further improve the state's contracting and procurement processes. The suggested actions will be referred to the previously discussed action teams for full consideration.

As noted by the BSA, each state department is ultimately responsible and accountable for its own contracting program. This includes ensuring the necessity of the goods and services, securing appropriate funding, complying with laws and policies, writing the contract in a manner that protects the state's interests, and obtaining required approvals. To assist state departments in complying

with their responsibilities and to accomplish its oversight responsibilities, over the years, the DGS has implemented numerous administrative control activities.

In administering its oversight responsibility, the DGS is continually striving to balance the appropriate level of control and oversight to ensure the quality and openness of the state's acquisition process with the need for departments to have effective and efficient methods of procuring goods and services. The necessity of obtaining an appropriate balance of control and oversight without unnecessarily restricting the acquisition process is particularly important during the State's current fiscal crisis. The effective and efficient use of the acquisition systems, CMAS and MAs, referenced in the BSA's report and included in the Task Force's report represent two primary tools that are used by state and local governments to reduce operating costs in their contracting and procurement processes.

In the last ten years, a number of actions have been taken that have resulted in more acquisitions being performed directly by departments and not by the DGS. Of primary note is the CMAS program, which was created through legislation enacted in 1993 and was a primary focus of the BSA's audit. This program has the effect of delegating the acquisition of goods and services to staff employed at individual state departments. This function was previously performed directly by DGS' professional procurement staff.

The creation of the CMAS program is extensively discussed in the Background section of the BSA's report and will not be repeated in this response. However, in brief, the CMAS program was created to provide an acquisition method that would be more value-driven than process-driven. This acquisition method allows a significantly less complex and costly acquisition process to be used to procure goods and services which results in substantial savings to state and local government entities when compared to the costs of using formal competitive bidding procedures.

While the DGS has oversight responsibility for the CMAS program and has implemented and is continuing to implement numerous administrative controls governing its operations, each state and local government entity is ultimately responsible and accountable for its own acquisitions under the program. This placement of responsibility is a key ingredient in ensuring that the procurement process is streamlined to remove repetitive, resource intensive, costly and time consuming processes.

As part of its ongoing efforts within the framework of procurement reform, the DGS is taking additional significant actions to improve controls within the CMAS program. Most notably, as part of the state's procurement reform effort, the DGS now requires state departments to solicit a minimum of three offers prior to purchasing from a CMAS supplier. However, it should be noted that to-date the CMAS program has been very successful in meeting customer needs. Since the roll-out of the program in May 1994, total CMAS purchases have grown from $84 million in the 1994/95 fiscal year to a high of $948 million in the 2000/01 fiscal year, including $362 million in local government purchases. Further, the CMAS program has been very successful in ensuring that small businesses are given opportunities to participate within the procurement process. The use of small businesses has grown to $124 million or 21% of CMAS procurements within the last fiscal year. The DGS also continually receives positive comments from its state, local and legislative customers that the CMAS program is a useful and valuable tool for making prompt value-effective acquisitions.

In various chapters of the BSA's report, concerns are expressed related to the state's Web portal project and DGS' role related to that project. This type of large-scale information technology system integration project will be more tightly controlled and administered under current state procurement policies and procedures. Further, as noted in the report, effective December 1, 2002, the responsibility for providing management, maintenance, and support of this project was transferred from the DGS to the Stephen P. Teale Data Center.

The following response only addresses the recommendations that are addressed to the DGS. The DGS appreciates the in-depth audit performed by the BSA and is fully committed to promptly and completely addressing the issues identified in the audit report. In general, the actions recommended by the BSA have merit and will be promptly addressed.

RECOMMENDATIONS

CHAPTER 2

RECOMMENDATION # 1: ***To ensure that the State has not paid for goods or services twice, General Services should review past payments to Deloitte Consulting and the StateStore by General Services, the Health and Human Services Data Center, and the Teale Data Center. If duplicate payments were made, General Services should recover them.***

DGS RESPONSE # 1:

As noted in the report, the BSA has performed extensive work in identifying the costs incurred for the Web portal project. The DGS is consulting with the BSA to identify any transactions that may indicate that a duplicate payment has been made. Any questionable transactions will be researched and, if found, duplicate payments recovered.

CHAPTER 3

RECOMMENDATION # 1: ***To ensure that state departments comply with statutes governing the use of noncompetitively bid contracts–sole-source contracts and emergency purchases–the State should take the following actions:***

- ***General Services should clarify the distinction between an emergency purchase and a sole-source contract. General Services should also provide guidance to departments and develop a form that clearly lays out what information is required to justify each type of noncompetitive purchase.***

- ***General Services' Office of Legal Services should review all sole-source contract requests above a certain threshold.***

- ***General Services should implement review procedures for sole-source contracts and emergency purchase orders that ensure that departments have complied with all applicable laws and regulations and require departments to submit documentation that demonstrates compliance. General Services should reject all sole-source and emergency purchase requests that fail to meet statutory requirements.***

- ***If General Services wants to continue to exempt purchases from competitive bidding because of the special or unique circumstances of departments, it should seek a change in the current contracting and procurement laws.***

DGS RESPONSE # 1:

For the first issue pertaining to clarifying the distinction between an emergency purchase and a sole source contract, the DGS will meet with its customers to identify areas of confusion and take appropriate action to address any issues that are identified through training and the issuance of informational bulletins. The DGS will also review its existing non-competitively bid contract justification form to ensure that it clearly identifies what information is required to justify the various types of non-competitive procurements.

As to the issue of legal review of non-competitively bid contracts, the DGS has implemented policies and procedures that provide for its OLS to review all non-competitively bid contract requests that exceed $250,000. The DGS has determined that these requests are of a high-risk nature that require legal participation.

The third proposed action related to review procedures for non-competitively bid contracts represents existing DGS policy and practice. However, the DGS will review its procedures to ensure that departments are being required to submit, and the DGS maintain, complete documentation that discloses compliance with all applicable rules and regulations.

As to the last recommended action, as part of its procurement reform efforts, the DGS will review the need for additional exemption authority related to competitive bidding.

CHAPTER 4

RECOMMENDATION # 1: ***To improve its administration of the CMAS program, General Services should take the following actions:***

- ***Increase the frequency of its reviews of CMAS vendors. Additionally, before accepting any contracts as base contracts, General Services should make certain that processes established by other government entities for awarding and amending multiple-award contracts are in accordance with CMAS goals.***

- ***As discussed further in Chapter 5, General Services should implement the recommendations made by the Governor's Task Force on Contracting and Procurement Review. In the short term, General Services should focus on the following:***

  1. ***Consider reducing or eliminating the delegated purchasing authority of departments that fail to comply with contracting and procurement requirements.***

  2. ***Consult with departments to determine what can be done to facilitate monthly reconciliation of CMAS purchasing and billing activities.***

DGS RESPONSE # 1:

The first action related to increasing the frequency of vendor reviews is a priority of the DGS. However, the state's current fiscal situation limits the department's ability to obtain and assign additional resources to this activity. In the interim, the PD is continuing to streamline processes and procedures to enable the conduct of more efficient and effective oversight activities, including the performance of more frequent CMAS vendor reviews.

For the second issue, the PD's CMAS Unit will focus additional efforts on obtaining further assurance that processes used by other government entities to execute contracts are in accordance with CMAS goals. To date, the CMAS Unit has developed written policies and procedures that more clearly address this activity.

For the issue related to delegated authority reductions or eliminations, the DGS is currently implementing Recommendation # 1 of the Task Force's report that requires a broadening of the scope of the delegation program to include CMAS transactions. In fact, in a January 31, 2003 memorandum, state departments were notified that the use of PD contracts, including CMAS agreements, is now included under the purchasing authority granted to agencies by the DGS. Further, the DGS is developing standards, procedures, requirements and guidelines for departments to request a CMAS delegation as well as what is expected in order for that delegation to be maintained. Compliance with requirements and guidelines is a major part of maintaining approved purchase authority. If the standards are not met, purchase authority will be reduced or eliminated.

As to the recommendation pertaining to the reconciliation of purchasing and billing activities, the implementation of a mandatory statewide electronic procurement system would enable the DGS to capture actual agency purchasing activity in real time, and is the ultimate solution to the department's billing challenges. The existing billing process is a labor-intensive activity that, on occasion, results in erroneous charges. Since each customer agency has the internal accounting control responsibility to review and approve their invoices, the current billing system primarily relies on the agencies to notify the PD of incorrect invoiced amounts. This does occur and corrections are made when appropriate.

The importance of a new information system is recognized by the DGS, and was articulated in the Task Force recommendations proposed by the department. However, implementation of such a complex system is costly and not feasible in the current fiscal environment. Therefore, the PD relies on agencies' timely submittal of purchase order copies to key into its Procurement Information Network system and generate invoices. As an interim corrective measure, the DGS will prepare a communication to its customer agencies advising them of the importance of regularly reconciling their purchasing information with invoices and reinforcing the need for agencies to report all contracting and procurement transactions.

CHAPTER 5

RECOMMENDATION # 1: ***To further improve the State's contracting and procurement processes, General Services should continue its efforts to implement the reforms recommended by the Governor's Task Force on Contracting and Procurement Review.***

Additionally, General Services should take the following actions:

- ***Develop a standard form that departments must complete to document their quotes from CMAS vendors. The form should also be used to document each department's basis for determining best value when cost is not the determining factor in the purchase.***

- ***Consider adopting maximum order-quantity levels that would prompt departments to seek additional discounts from CMAS vendors.***

- ***Strengthen its procedures for reviewing the processes used by government entities awarding base contracts.***

- ***Facilitate meetings with the Department of Finance and departmental internal auditors to revise existing audit procedures to include CMAS and noncompetitively bid contracts. General Services should also consider limiting its audits and reviews of some departments to an evaluation of the adequacy of the department's most recent internal review.***

- ***Develop training classes that provide comprehensive coverage of noncompetitively bid contracts and CMAS purchasing and require mandatory attendance by all state purchasing personnel. General Services should also evaluate the curriculum for its existing training classes and vendor seminars and consider implementing short-term changes to bridge the gap until a more comprehensive***

program can be developed.

- ***Work with departments to establish a process that ensures departments reconcile their purchasing information with invoices and reports prepared by General Services. General Services should also issue instructions to state departments reinforcing the importance of reporting all contracting and procurement transactions.***

- ***Explore the possibility of including copies of all vendor contracts on the CMAS Web site.***

- ***Require its Office of Legal Services to perform a final review of all contracts that General Services is required by law to review.***

- ***Ensure that all state purchasing personnel are represented in its efforts to improve the contracting and procurement processes and that information is effectively disseminated to state departments. General Services should also facilitate periodic meetings with state departments to discuss various procurement issues and exchange ideas and solutions with other departments.***

DGS RESPONSE # 1:

The DGS is committed to fully addressing the recommendations contained in the Task Force's report and has assigned significant resources to that activity. The following information is provided for each of the additional actions recommended above.

- *Documentation of Quotes* – the DGS has begun developing a form for use in documenting both quotes received by departments from CMAS vendors and the basis for a best value determination. To date, the PD has obtained examples of forms used by various state departments to use as a guide in developing the form. When finalized, the form will be included in the DGS' Purchase Authority Manual chapter on the use of CMAS contracts.

- *Maximum Order-Quantity Levels* – the DGS will study the feasibility and benefits of adopting maximum order-quantity levels within the CMAS program.

- *Review of Processes in Awarding Base Contracts* – see our previous response to Recommendation # 1 of Chapter 4. The PD is focusing additional efforts on the processes used by government entities to award base contracts.

- *Facilitate Meetings Related to Audit Procedures* – The DGS' Office of Audit Services will take the lead in facilitating a meeting with the Department of Finance to discuss the feasibility of revising existing audit procedures used in performing internal control reviews to provide addi-

tional coverage of CMAS and non-competitively bid contract transactions. Further, the DGS' audit and review staff will limit its activities in an individual department if the work performed by that department's internal audit unit sufficiently addresses areas under the purview of the DGS.

- *Development of Training Courses* – as discussed in the Overview section of this response, in conjunction with the California State University Northridge's Center for Management and Organization Development, the DGS conducted an extensive survey of individuals involved in state purchasing activities. Based on this new data, the DGS is phasing-in a series of new state acquisition courses. These courses will be phased in over the next six months. The first classes are planned to be offered in April 2003 and will deal with acquisition ethics and leveraged procurements. Ultimately, it is foreseen that a course curriculum will be offered that, upon completion, will result in a certification being earned by a student. Subsequently, the signature authority of individuals at departments will be linked to the level of training, experience and proficiency achieved. The contracting and purchasing authority granted to each department will also be impacted by these same criteria.

- *Reconciliation and Billing Process* – see our previous response to Recommendation # 1 of Chapter 4. The DGS is taking appropriate actions to address the actions contained in this recommendation.

- *Copies of Vendor Contracts on the Web* – while the DGS web site does provide a search tool by which customers can identify CMAS contracts by the categories of goods or services provided, customers are unable to access line item detail on-line. Implementing a detailed catalog containing CMAS goods and services requires implementation of a comprehensive electronic procurement system. A robust software and hardware solution will be required to support the CMAS program which has over 2,000 active contracts and more than 1,500 suppliers. The importance of this system is recognized by the DGS, and was articulated in the Task Force's recommendations proposed by the department.

- *Office of Legal Services Contract Reviews* – the OLS has recently augmented its staff and has established an integrated process with the PD to ensure that all high risk procurements are evaluated through a process that assesses the need for early legal intervention during the contract development process. In addition, all high risk contracts requiring DGS approval will undergo a legal review.

- *State Purchasing Personnel Involvement in Procurement Reform* – the DGS agrees that customer involvement is critical to the success of efforts to improve the contracting and procurement process. Client departments have actively participated in the development of the training and certification program (Task Force Recommendation # 8) and the contract registration system (Task Force Recommendation # 13). Further, the DGS solicits customer input through the DGS Partnership Council, which meets quarterly and includes representatives from 20 major state departments.

  In addition, the PD, at a minimum, conducts quarterly customer forums to dialogue with its customers on the state's procurement reform efforts and the OLS hosts monthly meetings of the State Contracting Advisory Network (SCAN). SCAN group is made up of state agency

contracting officials involved in service contracting. It serves as a forum for obtaining input from state agencies on better contracting practices and also as a communication link for new laws or policies.

CONCLUSION

The DGS is firmly committed to effectively and efficiently controlling the state's procurement process. As part of its continuing efforts to improve this process, the DGS will take appropriate actions to address the issues presented in the report.

If you need further information or assistance on this issue, please call me at 376-5012.

(Signed by: Clothilde V. Hewlett)

Clothilde V. Hewlett, Interim Director
Department of General Services

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Agency's comments provided as text only.

Business, Transportation and Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814-2719

March 14, 2003

Elaine M. Howle
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Attached is the Stephen P. Teale Data Center's (Teale) response to your draft report, Statewide Procurement Practices: Proposed Reforms Should Help Safeguard State Resources, But the Potential for Misuse Remains (#2002-112). Although the majority of the report was redacted to limit our review primarily to language concerning the state Web portal project, we appreciate the efforts your staff made to provide the necessary context for these areas in discussions with my staff.

We are also pleased that your report recognized the state Web portal as an award-winning, valuable tool, and that you credited Teale with entering a Web portal maintenance contract that achieved cost savings and used state resources advantageously. Further, Teale's standard operating practices already include each of the recommendations you made related to the future management, maintenance and support for the Web portal project.

I appreciate the opportunity to respond to your audit report. If you need additional information, please do not hesitate to contact me, or Michael Tritz, Chief of the Office of Internal Audits within the Business, Transportation and Housing Agency, at (916) 324-7517.

Sincerely,

(Signed by: Michael R. Tritz for)

MARIA CONTRERAS-SWEET
Secretary

Attachment

Office of the Director
Stephen P. Teale Data Center
P.O. Box 1810
Rancho Cordova, CA 95741-1810

March 12, 2003

Ms. Maria Contreras-Sweet, Secretary
Business, Transportation & Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814-2719

Dear Secretary Contreras-Sweet:

This memorandum presents the Stephen P. Teale Data Center's responses to the Bureau of State Audit's report titled "Statewide Procurement Practices: *Proposed Reforms Should Help Safeguard State Resources, But the Potential for Misuse Remains.*"

BSA Finding (Page 19) – Similarly, on three occasions the Teale Data Center purchased goods and service totaling $509,000 from the State Store that were not covered under the vendor's CMAS contract. In one instance, the Teale Data Center purchased software licenses from Broadvision – another subcontractor included in the State Store's CMAS contract – for $400,000, but the specific type of license was not covered by the existing CMAS contract.

Teale Response
CMAS contracts were viewed electronically at the time of these procurements. Teale acknowledges the possibility of human error. However, that possibility no longer exists, as Teale's current process requires that a hardcopy of the CMAS price list be reviewed by management staff prior to procurement approval. Additionally, the hardcopy price list is retained in the procurement file. This new process will prevent future occurrences of this type.

BSA Recommendations (Page 41) - In the September 2002 special project report, General Services transferred responsibility for providing management, maintenance, and support for the Web portal project to Teale Data Center. With that responsibility, the Teale Data Center should take the following actions to ensure that the State's investment in the Web portal is a prudent use of taxpayer resources:

Recommendation #1
Continue to use competitive processes for purchasing goods and services for the project.

Teale Response
Teale will continue to competitively procure goods and services. Teale has historically strived to obtain the best possible value at the lowest possible price through the bid process. This practice benefits both Teale and Teale customers due to the resulting cost savings.

Recommendation #2
Monitor project expenses by recording estimated costs when contracts and purchase orders are initiated and actual costs when they are paid.

Teale Response
Teale will continue to closely monitor project expenditures. Our procurement process requires an internal analysis and approval of estimated costs prior to the initiation of the bidding process. Our internal procedure requires that if the resulting procurement activity exceeds the original estimated cost, an internal approval is again required. Additionally, Teale's Administration-Finance Division monitors expenses.

Recommendation #3
Submit special project reports (SPR) to Finance and the LAO when required and ensure that reported costs accurately reflect actual expenditures and commitments to date.

Teale Response
Teale will continue its standard practice of submitting SPRs when required to accurately report all costs to the Department of Finance and the Legislative Analyst Office.

Recommendation #4
Ensure that special project reports contain estimates for at least the same number of years that earlier reports covered so that reviewers can easily identify changes in the overall projected cost.

Teale Response
It is Teale's standard practice to present consistent and accurate information based on the specific requirements for the requested format.

If you need any additional information, please contact me or Debra Gonzales at 464-4510.

Sincerely,

(Signed by: Carlos Ramos)

CARLOS RAMOS
Director

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press

California State Auditor

BUREAU OF STATE AUDITS

Statewide Procurement Practices

Proposed Reforms Should Help Safeguard State Resources, but the Potential for Misuse Remains

Presentation by

California State Auditor

Joint Legislative Audit Committee
Informational Hearing

April 9, 2003

This presentation document is only intended to outline selected portions of Report 2002-112, *Statewide Procurement Practices: Proposed Reforms Should Help Safeguard State Resources, but the Potential for Misuse Remains* (March 2003). For a more complete explanation of the points outlined in this document, refer to the report.

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* This figure was not presented in California State Auditor Report 2002-112, but is intended to further illustrate information contained in the report.

AUDIT SCOPE

- Audit the California Multiple Award Schedules (CMAS) program and the State's sole-source contracting procedures.
- Review the process used by Department of General Services when establishing the CMAS vendors' list.
- Review the procedures and practices used to identify qualified contractors and consultants when using noncompetitively bid and CMAS contracts to procure goods and services.
- The Joint Legislative Audit Committee also requested that we specifically include CMAS and noncompetitively bid procurements from Oracle, Logicon, and David Lema and Associates in our sample.
- Review procurements relating to the state Web portal.
- Departments for which we reviewed CMAS purchases:
  - ✓ **Department of Corrections**
  - ✓ **Department of Food and Agriculture**
  - ✓ **Department of Consumer Affairs**
  - ✓ **Department of Justice**
  - ✓ **Department of Motor Vehicles**
  - ✓ **Department of Transportation**
  - ✓ **Health and Human Services Data Center**
  - ✓ **Office of Emergency Services**
  - ✓ **Stephen P. Teale Data Center**

AUDIT HIGHLIGHTS

- State departments spend billions of dollars each year using the California Multiple Award Schedules (CMAS) program, master service agreements (MSAs), sole-source contracts, and emergency purchase orders.

- Before the governor's May 2002 Executive Order requiring departments to adhere to stricter contracting and procurement procedures, departments did not compare prices among CMAS vendors.

- Poor oversight and administration by the Department of General Services (General Services) contributed to the problems we identified with departments' purchasing practices.

- Without comparing prices, the State purchased millions in good and services for the Web portal project.

- Estimated Web portal project costs given to administrative control agencies and the Legislative Analyst's Office were sometimes inaccurate.

- Before the Executive Order, departments frequently misused alternative procurement practices—sole-source contracts and emergency purchases.

- General Services' procedures for adding new vendors and products to the CMAS list are weak.

- The information technology system for the CMAS program does not contain the information needed to make efficient CMAS purchases and contains inaccurate expenditure data.

- Recent improvements recommended by General Services and the Governor's Task Force on Contracting and Procurement Review should address many of the weaknesses we identified, but further changes are needed.

Departments Often Used CMAS to Purchase Goods and Services Without Comparing Prices or Determining Best Value

As you know, the Legislature enacted legislation in 1993 that allows for an alternative to the standard competitive bidding process. This program, known as the California Multiple Award Schedules Program or CMAS program, is modeled after the federal Multiple Award Schedules Program (FMAS), and allows the State to establish competitively bid contracts with multiple vendors who agree to provide a high volume of some good or service to the State. The underlying goal of this program is to achieve volume discounts for frequently used goods and services.

Once General Services establishes a California multiple award schedule for a product or service, state agencies can then purchase items from a list of pre-approved vendors without having to conduct a full-blown competitive bid process for each purchase. This program is designed to promote both competition and efficiency.

Under the CMAS program, California does not conduct the competitive bidding process. Instead, California relies on contracts that have been previously established between the federal government and vendors and "reestablishes" those contracts. California also relies on multiple award schedules that have been previously established by other states and local governments. While the FMAS contracts established by the federal government undergo a rigorous competition, multiple award schedules established by other states or local governments may be subject to varying degrees of competition, depending on the laws that govern competitive bidding for those entities.

In fiscal year 2000-01 state departments spent $889 million purchasing goods and services from vendors participating in the CMAS program.

Prior to the May 2002 Executive Order, General Services ***recommended*** that departments compare prices among CMAS vendors before making purchases. However, there was ***no requirement*** that departments compare prices, and departments generally ignored the recommendation of General Services. **(See Table 1)**

Examples: OES made five purchases totaling $1.5 million without comparing prices. Similarly, Corrections purchased computer hardware maintenance services totaling $4.6 million, but could not provide us with documentation showing that it compared prices and services among CMAS vendors.

Departments had three reasons for not comparing prices among CMAS vendors:

1. **General Services recommended, but did not require, that they compare prices.**

2. **Several departments believed that CMAS vendors had already gone through a competitive evaluation; therefore, comparison shopping would not result in better prices.**

3. **It was too difficult to obtain contracts and price lists from General Services or vendors making comparing prices problematic.**

CMAS contracts were also used extensively to purchase hardware, software, and consulting services for the state Web portal.

When Developing the Web Portal, State Entities Disregarded Recommended Protocols for Using CMAS and Failed to Comply With the Terms of a Master Service Agreement

The state Web portal is a multimillion-dollar project that facilitates Internet access to the State's government services. The Web portal has been commended for providing efficient access to government services. Our audit is not in any way intended to evaluate the merits of this state resource. Our audit focuses only on the planning and acquisition process that was used to acquire the hardware and software used to implement the Web portal.

Four state agencies purchased $3.2 million of goods and services from one vendor and $8.4 million in consulting services from another vendor without comparing prices or analyzing factors other than price. **(See Table 2)** By not comparing prices, the State cannot ensure that the costs of goods and services purchased were reasonable.

> $3.2 million of the purchases were from the StateStore and $8.4 million were from Deloitte Consulting. These purchases were made by the Teale Data Center, Health and Human Services Data Center, and General Services.

These purchases were in large part made at the request of former officials of the Governor's Office.

The StateStore's CMAS Contract Did Not Include Some Goods and Services Purchased for the Web Portal

General Services purchased goods and services totaling more than $181,000 from the StateStore that were not in the StateStore's CMAS contract.

The Teale Data Center purchased goods and services totaling $509,000 from the StateStore that were not covered under the vendor's contract.

In a sample of 44 purchase orders that we reviewed at the nine departments, three contained at least one item that was not in the approved CMAS contract.

Subsequent to the Executive Order, More Departments Did Compare Prices and Document Best Value

In a sample of 25 purchases made after the May 2002 Executive Order, we found only two instances where departments did not obtain at least three price quotes.

The Lack of Accountability for State Web Portal Project Purchases Resulted in Undisclosed Costs and Violations of State Policy

The Web portal project involved a series of purchases made by four state entities: the Enterprise Business Office and the Telecommunications Division, both within General Services; the Teale Data Center, and the Health and Human Services Data Center.

Purchases were made largely at the direction of former officials of the Governor's Office. These officials received advice from a Web council composed of officers from several large private businesses.

In total, the design, implementation, and maintenance of the Web portal required at least 84 purchases from 20 vendors. The departments used the CMAS program and master service agreements (MSAs) to make $12.7 million of the $15.2 million in purchases from August 2000 through December 2002. **(See Table 2)**

ALTHOUGH INITIATED BY THE GOVERNOR'S OFFICE, THE WEB PORTAL BECAME THE RESPONSIBILITY OF GENERAL SERVICES

In April 2000, the Governor's Office submitted a feasibility study report to the Departments of Information Technology (DOIT) and Finance (Finance) indicating that development and maintenance for the Web portal would be $4.5 million over six years.

In September 2000, General Services assumed administrative responsibility for the Web portal and subsequently submitted a feasibility study report estimating the costs at $5.1 million.

Although General Services became the administrator, the former directors of eGovernment and Executive Information Services directed much of the purchasing and decision-making activities. **(See Figure 1)**

THE STATE'S FAILURE TO COMPARE PRICES CREATED THE APPEARANCE THAT SOME COMPANIES MAY HAVE HAD AN UNFAIR ADVANTAGE IN SELLING WEB PORTAL COMPONENTS TO THE STATE

The Web portal was developed with guidance from a group of executives from several private businesses participating in the Web council, some of which later sold products to the State for the project.

Three companies—Broadbase Software, Broadvision, and Hewlett-Packard—sold hardware and software components to the State for the Web portal totaling $2.5 million. Not comparing prices of goods and services offered by these companies to those offered by others creates an appearance of unfairness.

Former officials of the Governor's Office, wanting to avoid the lengthy competitive bidding process, elected to use CMAS and an MSA for purchases for the Web portal project.

One of the former officials of the Governor's Office selected the StateStore and Deloitte Consulting to provide the bulk of the goods and services for the Web portal project.

The StateStore is a reseller with a CMAS contract through which it sold the services and products of subcontractors to the State for the Web portal. These subcontractors included Broadbase Software, Broadvision, Interwoven, and Verity Software. **(See Figure 1)**

General Services and the Health and Human Services Data Center issued a total of 13 purchase orders to Deloitte Consulting totaling $7.9 million based on the vendor's MSA contract.

GENERAL SERVICES AND FORMER OFFICIALS OF THE GOVERNOR'S OFFICE DID NOT FOLLOW STATE POLICY GOVERNING INFORMATION TECHNOLOGY PROJECTS

General Services Lacked Control Over the Web Portal Project

General Services did not adequately coordinate and monitor Web portal purchasing and reporting activities. As a result, the special project reports submitted to DOIT, Finance, and the Legislative Analyst's Office (LAO) did not accurately account for all Web portal purchases.

A decentralized purchasing method—with the former officials of the Governor's Office directing purchases made by several state entities—made it difficult for General Services to account for all Web portal activities.

An original feasibility study report showed estimated costs of the Web portal at $5.1 million. In November 2000, General Services submitted a special project report to DOIT, Finance, and the LAO indicating that the estimated Web portal costs would increase to $6.8 million—a 32 percent increase. **(See Figure 2)**

At the time, state policy required a department to submit a special project report to DOIT, Finance, and the LAO if the total costs of an information technology (IT) project were expected to deviate by more than 10 percent from the previous estimate. A department should not implement any changes to IT projects until DOIT and Finance approve the special project report.

The next special project report, dated January 5, 2001, estimated the costs to be $13.5 million, but provided no explanation for the significant increase in project costs. In fact, this report was not signed by the director of General Services or his designee as required by state policy. This report was approved by Finance.

> According to information provided by Finance, it appears that the unsigned special project report was prepared by staff at the Employment Development Department following a meeting between Finance officials, a former Governor's Office official, and representatives from General Services.

Another special project report further increasing the cost of the Web portal to $26.2 million was submitted by General Services on January 15, 2002. While the report included an explanation for the increased costs, it was not submitted until after the project enhancements had been made.

> In the January 15, 2002, special project report General Services reported that it had contracted with Deloitte Consulting for $5.2 million; however, by that time General Services and the Health and Human Services Data Center had already paid Deloitte Consulting $5.7 million and had committed the State to paying the company another $2.6 million.

Web Portal Special Project Reports Were Inaccurate Because They Failed to Include Some Actual and Projected Costs

At least one special project report was inaccurate because it did not include more than $1.3 million in Web portal costs incurred by General Services' Telecommunications Division and the Health and Human Services Data Center.

> Former officials of the Governor's Office directed the Telecommunications Division to purchase $1.1 million in consulting services and software for the Web portal. The Health and Human Services Data Center used its own funds to purchase $250,000 in services for the Web portal from Deloitte Consulting.
>
> These costs were not included in the special project reports because these entities were not reimbursed for portal-related purchases. Costs incurred by the Telecommunications Division were recovered through service fees charged to state departments for the State's telephone network.

Two special project reports understated estimates for future years' costs because they did not include any costs through fiscal year 2005-06. **(See Figure 2)**

> The feasibility study and first two special project reports included costs from fiscal years 2000-01 through 2005-06. (These reports cover six fiscal years.)
>
> A special project report, dated January 15, 2002, did not show any costs for fiscal years 2004-05 and 2005-06. (This report covers only four fiscal years.)

The most recent special project report, dated September 20, 2002, does not include costs for fiscal year 2005-06. (This report covers only five fiscal years.)

THE USE OF MULTIPLE DEPARTMENTS TO MAKE PURCHASES FOR THE WEB PORTAL RESULTED IN PAYMENTS FOR SOME SERVICES THAT WERE REQUIRED UNDER EARLIER AGREEMENTS

On March 26, 2001, General Services' Telecommunications Division issued a $173,000 purchase order to Deloitte Consulting for project management of ongoing operations and maintenance support of the Web portal. The terms of this contract duplicated some of the terms and services of another purchase order that General Services' Enterprise Business Office issued on January 29, 2001, to Deloitte Consulting. **(See Figure 3)**

In May 2001, the Health and Human Services Data Center entered into an agreement with Deloitte Consulting to create a plan to develop a Web portal mirror site.

Much of the content of reports submitted by Deloitte Consulting in fulfillment of its agreement with the Health and Human Services Data Center was already covered by earlier contracts between the consulting firm and the Enterprise Business Office.

Health and Human Services Data Center paid Deloitte Consulting for its services under the contract before receiving the required deliverables. According to the employee who approved the payment to Deloitte Consulting he did so based on assurances given to him by one of the former officials in the Governor's Office that the services called for had been provided.

RECENT ACTIONS BY GENERAL SERVICES AND THE TEALE DATA CENTER HAVE REDUCED WEB PORTAL MAINTENANCE COSTS

The most recent special project report shows the costs for the Web portal to be $20.3 million, a reduction of nearly $6 million from the previous report. **(See Figure 2)**

On June 12, 2002, the interim director of DOIT said that although Deloitte Consulting's work product had been exemplary, its Web portal agreements were expensive and little had been done to transfer the consulting firm's expertise to state employees. As such, he recommended that General Services extend Deloitte Consulting's Web portal maintenance agreement until a competitively selected contractor became available.

General Services entered into an $820,000 noncompetitively bid contact with Deloitte Consulting to maintain the Web portal starting July 1, 2002, and ending December 31, 2002. The new contract limited Deloitte Consulting's maintenance activities to normal work hours rather than the previous agreements, which called for maintenance activities by Deloitte Consulting 24 hours a day, seven days a week.

When the contract ended on December 31, 2002, state employees apparently were not ready to maintain all aspects of the Web portal; therefore, Teale entered into another six-month contract with Deloitte Consulting for $350,000. Unlike the previous contract, this contract was competitively bid. **(See Figure 3)**

Teale solicited proposals from 20 different companies and six responded. Deloitte Consulting was ultimately selected; however, by using the competitive process Teale achieved a 39 percent average reduction in Deloitte Consulting's hourly rates from the rates paid on earlier, noncompetitively bid contracts.

By Strengthening Its Review Processes, General Services Could Reduce Departments' Misuses of Sole-Source Contracts and Emergency Purchases

State law allows a department to purchase information technology (IT) goods and services and non-IT goods without competitive bidding if the department and General Services agree that there is only one good or service that can meet the State's needs. A contract established using this exception is commonly known as a sole-source contract.

An emergency purchase is allowed for a purchase that must be made immediately for the protection of public health, welfare, or safety.

STATE DEPARTMENTS IMPROPERLY USED SOLE-SOURCE CONTRACTS TO OBTAIN GOODS AND SERVICES

General Services approved eight of 23 sole-source contract requests we reviewed even though the requests did not sufficiently justify the use of sole-source contracts.

- ✓ In four requests, the departments failed to provide the kind or degree of justification we expected to see.
- ✓ In one case, the department's justification was ambiguous.
- ✓ In the three remaining cases, the departments sought sole-source contracts because they did not have sufficient time to acquire the goods or services through the competitive bidding process.

In Addressing Concerns With Sole-Source Contracts, the State Should Consider Implementing Procedures Used by the Federal Government

The federal government requires an agency to post a public notice when seeking approval of certain sole-source contracts, and if poor planning necessitates certain contracts, the agency must specify how it will avoid similar situations in the future.

In addition, in every sole-source contract, General Services should include provisions that protect the State's interest if the contract needs to be amended or if future goods and services are needed from the sole-source vendor.

DESPITE WELL-ESTABLISHED CRITERIA FOR EMERGENCY PURCHASES, DEPARTMENTS SUBMITTED INCORRECT OR INADEQUATE INFORMATION THAT GENERAL SERVICES IMPROPERLY APPROVED

In our review of 25 purchase requests, all of which General Services approved, we found that in 17 cases the departments were requesting approval of emergency purchases. However, in the remaining eight cases the departments were requesting approval for reasons other than meeting emergency needs, such as seeking to purchase an item to meet a special need. Although it did not have the authority, General Services incorrectly exempted these from the State's competitive bidding process.

Of the 17 emergency purchases totaling $21.3 million, nine totaling $2.3 million completely failed to identify the existence of an emergency situation that fell within the statutory definition or to explain how the purchase related to addressing the threat posed by an emergency.

- In five cases, the departments did not have a clear understanding of what constitutes an emergency as defined by state law.
- In four cases, the departments did not adequately explain how the proposed purchase would address the threat posed by the emergency.
- In the remaining eight cases, the departments adequately justified the emergency need.

The common theme throughout many of the unjustified emergency purchases was that the departments failed to properly plan for a competitive bidding process for items used in the regular course of business.

A FAILURE TO ADEQUATELY JUSTIFY SOLE-SOURCE AND EMERGENCY PURCHASES MAY RESULT IN QUESTIONS ABOUT THE VALIDITY OF THE CONTRACTS

If a contract is established without competition and fails to satisfy the statutory requirements for either a sole-source contract or an emergency purchase, a court might conclude that it is not enforceable as a valid contract.

We did not attempt to determine whether any particular contract is invalid; however, it is important to understand that a court may set it aside as void and unenforceable.

General Services Needs to Strengthen Its Oversight of State Purchasing Activities

INSUFFICIENT AUDITS AND REVIEWS WEAKEN GENERAL SERVICES' ABILITY TO MONITOR DEPARTMENTAL PURCHASING PRACTICES

By law, General Services is required to annually review the purchasing activity of departments that have been granted purchasing authority and audit those departments every three years.

> According to General Services' records, it has completed only 60 percent of the required reviews since fiscal year 1999-2000.

The Procurement Division is responsible for conducting reviews of departments that have been delegated purchasing authority.

> Between July 1999 and January 2003, the Procurement Division had completed 105 of the 174 required reviews. Less than half of these reviews were completed within the required three years.

The Audits Division has the responsibility to perform comprehensive audits of state departments that have delegated purchasing authority. The audits the division conducts include examinations of CMAS purchases as well as sole-source contracts and emergency purchases.

> Since July 1998, the Audits Division has completed only 19 audits of the 40 departments it includes in its audit rotation.

MORE FREQUENT REVIEWS OF CMAS VENDORS WOULD HELP GENERAL SERVICES TRACK CONTRACT COMPLIANCE

Reviews of CMAS vendors determine whether the CMAS contract included the goods and services purchased and whether the purchasing department paid the correct price.

Of the 2,300 active CMAS vendors reported by General Services as of August 2002, it had reviewed only 29 from July 1998 through September 2002.

GENERAL SERVICES NEEDS TO IMPROVE ITS PROCESS FOR ADDING NEW VENDORS AND PRODUCTS TO THE CMAS LIST

General Services allows contracts between other public entities and multiple-award vendors to serve as the basis for state CMAS contracts. In other words, rather than awarding its own base contract under the CMAS program, General Services requires a vendor to submit a written offer

of products, services, and prices that reside on an existing federal or other government entity's multiple award contract. The four types of base contracts that allow a vendor to participate in the CMAS program are as follows:

- ✓ **Applicant holds a federal multiple-award schedules (FMAS) contract:** Applicant has a multiple-award contract with the federal government that was awarded through a competitive bidding process that considered price. The FMAS was developed by the federal General Services Administration (GSA). The applicant must submit a copy of that contract to General Services.

- ✓ **Applicant piggybacks off another vendor's FMAS contract:** Applicant does not have a contract with the federal government, but agrees to offer products and/or services at the same prices as a vendor who does have a multiple award contract with the federal government. The applicant must also submit other qualifying information.

- ✓ **Applicant holds a non-GSA multiple-award contract:** Applicant has a multiple-award contract with a non-GSA entity. Non-GSA includes other federal, state, or local agencies. The applicant must submit to General Services the solicitation document used by the non-GSA entity to request bids from vendors. In addition, the applicant must submit its contract to General Services to show that a price comparison was part of the evaluation criteria used by the non-GSA entity when awarding the contract.

- ✓ **Applicant piggybacks off another vendor's non-GSA contract:** The applicant does not have a multiple-award contract but agrees to provide goods and/or services at the same prices as the vendor that has a multiple-award contract with a non-GSA entity. The applicant must also submit other qualifying information.

As of October 2002, 87 percent of CMAS contracts were with vendors who piggyback off of another vendor's multiple award schedule contract. **(See Figure 4)**

Despite Following Its Established Procedures for Awarding CMAS Contracts, General Services Cannot Verify That Base Contracts and Amendments Were Competitively Awarded

We reviewed a sample of seven contracts and found that General Services obtained the necessary information from the applicant vendors. However, we could not determine whether General Services independently verified the information provided by the vendors.

Two of the contracts that we tested were with the StateStore, a private reseller specializing in the state government IT market. According to General Services' records, between January 2000 and June 2002, the State made more than 900 purchases totaling approximately $32 million from the StateStore.

The StateStore's CMAS contract that was used to make purchases for the Web portal is based on a multiple-award contract that was originally established between the StateStore and the Merced County FOCUS program. Merced County started the FOCUS program in 1997 as a way to establish multiple-award contracts for IT goods and services. Unlike CMAS, FOCUS vendors are required to pay Merced County a percentage of the revenue generated by the contract. Vendors pay the fee when other governments, including the State, use a FOCUS contract as a basis for their own multiple-award schedules. CMAS vendors use FOCUS contracts as the basis for CMAS contracts more frequently than any other non-GSA entity's contracts. **(See Figure 4)**

General Services Did Not Confirm That the FOCUS Program Followed the Requirements for Vendors Specified in the Request for Proposal

In its request for proposal, Merced County required its applicants to meet the following requirements:

- Demonstrate that the prices of products and services offered represent the most competitive pricing given to state and local government entities.
- Offer only prices that reflect an across-the-board percentage discount for every item submitted.
- Specify the percentage discount offered.

Despite this language, the StateStore submitted a bid to Merced County that did not meet these requirements. General Services did not question the inconsistencies between Merced County's request for proposal and the StateStore's submitted bid. In August 2000, General Services added the StateStore to the CMAS list based on the FOCUS contract granted to the StateStore in May 2000.

Between August 2000 and March 2002, the StateStore amended its FOCUS contract 20 times, adding new product lines and updating prices for existing lines. State officials requested most of the amendments so that the StateStore's CMAS contract could likewise be amended, thereby enabling the State to purchase specific goods and services for the Web portal.

The premise behind the CMAS amendment process is that all base contracts and any subsequent amendments have been competitively assessed. In the case of the Merced County FOCUS program, competitive assessment did not occur.

> We found that most of the updates to the StateStore's contract with Merced County were approved within two days. On six occasions, the updates were approved on the same day and in one of the six requests, Merced County updated its contract with the StateStore with four new product lines in little more than an hour.

INACCURATE DATA CAUSED GENERAL SERVICES TO SOMETIMES OVERCHARGE DEPARTMENTS USING THE CMAS PROGRAM

General Services charged departments an administrative fee of 1.21 percent of each CMAS purchase. Purchases from small business vendors are exempt.

We reviewed 90 CMAS purchases at nine departments and found 24 instances in which General Services had either entered the incorrect amount into the system or had no record of the transaction.

Departments are responsible for submitting CMAS purchase orders to General Services. Therefore, missing records may be the result of departments failing to submit the required information to General Services

For 10 incorrectly recorded transactions we found that General Services had overcharged departments by more than $219,000.

General Services charges the departments electronically and later sends billing information to the departments. However, most of the nine departments we reviewed indicated that they do not reconcile the billing information they receive from General Services to their CMAS purchase orders.

Recommendations of the Governor's Task Force on Contracting and Procurement Review Should Improve Controls on Contracting and Procurement

In May 2002, the governor issued an Executive Order creating the Governor's Task Force on Contracting and Procurement Review. In August 2002, the task force made 20 recommendations designed to improve the contracting and procurement processes of the State **(Appendix B)**. The recommendations focus on the use of the CMAS program and noncompetitively bid contracts and on establishing contracting and procurement standards for state departments and General Services. In general, we believe the task force's recommended changes, if properly implemented, should address many of the weaknesses in the CMAS program and noncompetitive bidding procedures we identified in the audit report.

KEY TASK FORCE RECOMMENDATIONS

To departments:

- ✓ Must solicit and obtain at least three price quotes, including at least one from a small business when making a CMAS purchase.

To General Services:

- ✓ Develop standards and criteria for potential CMAS vendors that are not part of the federal multiple-award schedules program.
- ✓ Adopt a policy prohibiting departments from using CMAS or master agreements for large IT projects unless approved as part of feasibility study reports.
- ✓ Perform random audits and compliance reviews of departments' contracting and procurement transactions.
- ✓ Develop a uniform set of policies, procedures, and processes for contracting and procurement activities.
- ✓ Develop and deliver a comprehensive training and certification program for state contracting and procurement officials.
- ✓ Implement a comprehensive electronic procurement system for all state contract and procurement transactions.
- ✓ Ensure legal review of all high-risk transactions, including large IT projects.
- ✓ Involve stakeholders in continuous improvement of contracting and procurement processes.

STATE AUDITOR RECOMMENDATIONS

STATE DEPARTMENTS

Ensuring that the State receives the best value when acquiring goods and services requires all state departments to make changes in their purchasing procedures, including the following:

- Disseminate the reforms arising from the May 2002 Executive Order and the task force's recommendations to all departmental purchasing personnel.
- State department officials should stress adherence to CMAS and noncompetitive bid contracting requirements and reject requested purchases when these requirements are not met.
- Require that their legal counsel review sole-source contracts and emergency purchases for compliance with statutory requirements before submitting them to General Services.
- State departments should institute procedures to accurately identify and monitor their procurement needs to ensure that sufficient time exists to properly plan for the acquisition of goods and services. Additionally, departments should continuously assess the effects of legislative and other requirements on their procurement needs.

TEALE DATA CENTER

To ensure that the State's investment in the Web portal is a prudent use of taxpayer resources, the Teale Data Center should:

- Continue to competitively bid purchases of goods and services for the Web portal project.
- Monitor project expenses by recording estimated costs when contracts and purchase orders are initiated and actual costs when they are paid.
- Submit special project reports to Finance and LAO when required, and ensure that reported costs accurately reflect actual expenditures and commitments to date.
- Make certain that special project reports contain estimates for the same number of fiscal years so that reviewers can easily identify changes in overall projected costs.

DEPARTMENT OF GENERAL SERVICES

As the administrator of the State's contracting and purchasing procedures, General Services should take the following actions:

- Clarify the distinction between an emergency purchase and a sole-source contract and develop a form that clearly lays out the required information to justify each type of noncompetitively bid purchase.

- Require its Office of Legal Services to review all sole-source contract requests above a certain price threshold.

- Increase the frequency of its audits and reviews of CMAS vendors.

- Obtain assurance that other government entities' processes for awarding and amending multiple-award contracts are in accordance with CMAS goals before accepting these contracts as bases for CMAS contracts.

- Implement the recommendations made by the task force. Immediate actions General Services should take include the following:

    - ✓ Enforce the laws that limit the conditions under which the State can make sole-source and emergency purchases. Reject all sole-source and emergency purchase requests that fail to meet statutory requirements.

    - ✓ If General Services believes that it is in the State's best interest to grant more latitude for making noncompetitively bid purchases, it should seek changes in legislative authority for such purchases.

    - ✓ Consider reducing or eliminating the delegated purchasing authority of departments that fail to comply with contracting and procurement requirements.

    - ✓ Consult with departments to determine what can be done to facilitate monthly reconciliations of CMAS purchasing and billing activities.

    - ✓ Explore the cost of upgrading its existing Web site to include more comprehensive information about CMAS vendors, including a complete price list of available goods and services for each vendor.

- Develop a standard form that departments must complete to document their quotes from CMAS vendors. The form should also be used to document each department's basis for determining best value when cost is not the determining factor in the purchase.

- Consider adopting maximum-quantity levels that would prompt departments to seek additional discounts from CMAS vendors.

- Facilitate meetings with Finance and department internal auditors to revise existing audit procedures to include CMAS and noncompetitively bid contracts.

- Develop training classes that provide comprehensive coverage of noncompetitively bid contracts and CMAS purchasing and require mandatory attendance by all state purchasing personnel.

- Ensure that all state purchasing personnel are represented in its efforts to improve the contracting and procurement processes and that information is effectively disseminated to state departments. In addition, General Services should facilitate periodic meetings with state departments to discuss various procurement issues and exchange ideas and solutions with other departments.

LEGISLATURE

- To emphasize the need for departments to obtain the best prices when using the CMAS program, the Legislature should consider revisiting existing CMAS statutes to include language that requires departments to obtain at least three price quotes before making CMAS purchases.

- The Legislature should also consider amending the law to specifically require General Services to review state departments' IT purchases every three years as it is now required to review non-IT purchases.

TABLE 1

Before the May 2002 Governor's Executive Order, Departments Did Not Consistently Compare Prices or Document Best Value for CMAS Purchases

Department	Governor's Executive Order	Compared Prices	Documented Best Value
Department of Corrections	Before	1 of 4*	1 of 4*
	After	2 of 3	2 of 3
Department of Food and Agriculture	Before	0 of 5	0 of 5
	After	1 of 1†	1 of 1†
Department of Consumer Affairs	Before	3 of 4‡	4 of 5
	After	3 of 3	3 of 3
Department of Justice	Before	2 of 5	2 of 5
	After	2 of 2§	3 of 3
Department of Motor Vehicles	Before	3 of 5	3 of 5
	After	3 of 3	3 of 3
Department of Transportation	Before	3 of 5	4 of 5
	After	3 of 3	3 of 3
Health and Human Services Data Center	Before	2 of 5	2 of 5
	After	3 of 3	3 of 3
Office of Emergency Services	Before	0 of 5	0 of 5
	After	2 of 3	2 of 3
Stephen P. Teale Data Center	Before	2 of 5	2 of 5
	After	3 of 3	3 of 3

* One purchase order was from a statewide contract; price comparison or best value documentation is not applicable.

† Only one purchase made through the CMAS program had been approved when we conducted our fieldwork.

‡ One purchase order we tested was for an expansion of an existing contract; price comparison is not applicable.

§ One purchase order was for a noncompetitvely bid contract; price comparison is not applicable.

Note: This table is presented on page 19 of the California State Auditor Report 2002-112.

TABLE 2

For the State's Web Portal, Four Agencies Made 84 Purchases Worth $15 Million From August 2000 Through December 2002 (Dollars in Thousands)

State Department	StateStore Incorporated		Deloitte Consulting		Other Vendors		Total	
	Purchase Amount	Number of Purchases	Purchase Amount	Number of Purchases	Purchase Amount	Number of Purchases	Purchase Amount	Number of Purchases
Enterprise Business Office of the Department of General Services	$1,160	8	$7,530*	10	$ 10	3	$ 8,700	21
Telecommunications Division of the Department of General Services	40	1	980	3	100	2	1,120	6
Stephen P. Teale Data Center	1,810†	11	0	0	2,590	43	4,400	54
Health and Human Services Data Center	270	1	690‡	2	0	0	960	3
Totals	**$3,280**	**21**	**$9,200**	**15**	**$2,700**	**48**	**$15,180**	**84**

* The Enterprise Business Office made one purchase of $820,000 using an approved noncompetitively bid contract.

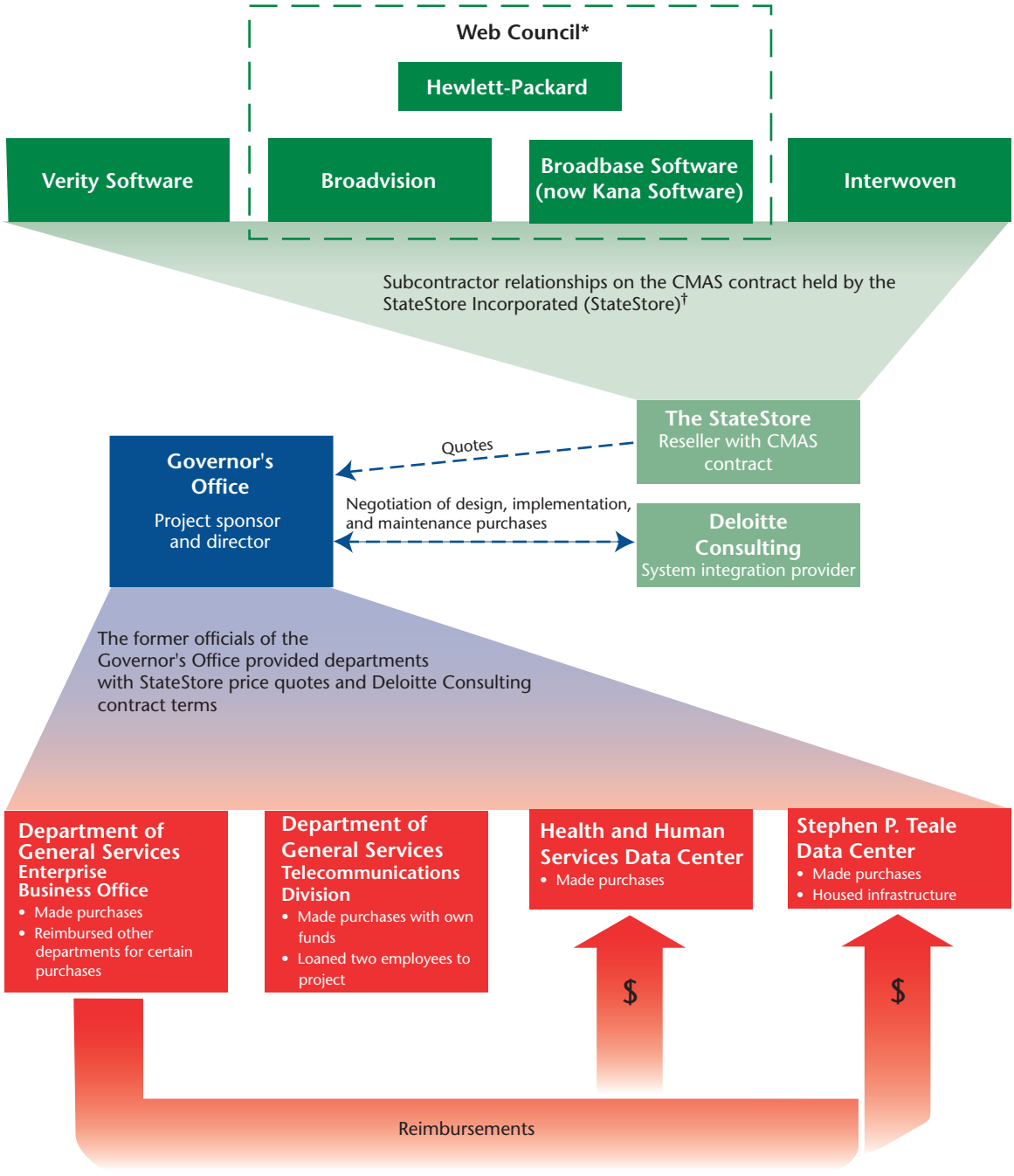
† One $83,000 purchase made after the May 2002 Executive Order did not involve the CMAS program; Teale Data Center obtained a comparative quote for this purchase.

‡ In one instance, the Health and Human Services Data Center used the CMAS program rather than an MSA to purchase $450,000 in services.

Note: This table is presented on page 22 of the California State Auditor Report 2002-112.

FIGURE 1

Numerous Private and State Entities Had Roles in Developing the State Web Portal


Web Council*
Hewlett-Packard
Verity Software
Broadvision
Broadbase Software (now Kana Software)
Interwoven
Subcontractor relationships on the CMAS contract held by the StateStore Incorporated (StateStore)†
The StateStore
Reseller with CMAS contract
Quotes
Governor's Office
Project sponsor and director
Negotiation of design, implementation, and maintenance purchases
Deloitte Consulting
System integration provider
The former officials of the Governor's Office provided departments with StateStore price quotes and Deloitte Consulting contract terms
Department of General Services Enterprise Business Office
• Made purchases
• Reimbursed other departments for certain purchases
Department of General Services Telecommunications Division
• Made purchases with own funds
• Loaned two employees to project
Health and Human Services Data Center
• Made purchases
Stephen P. Teale Data Center
• Made purchases
• Housed infrastructure
$
$
Reimbursements

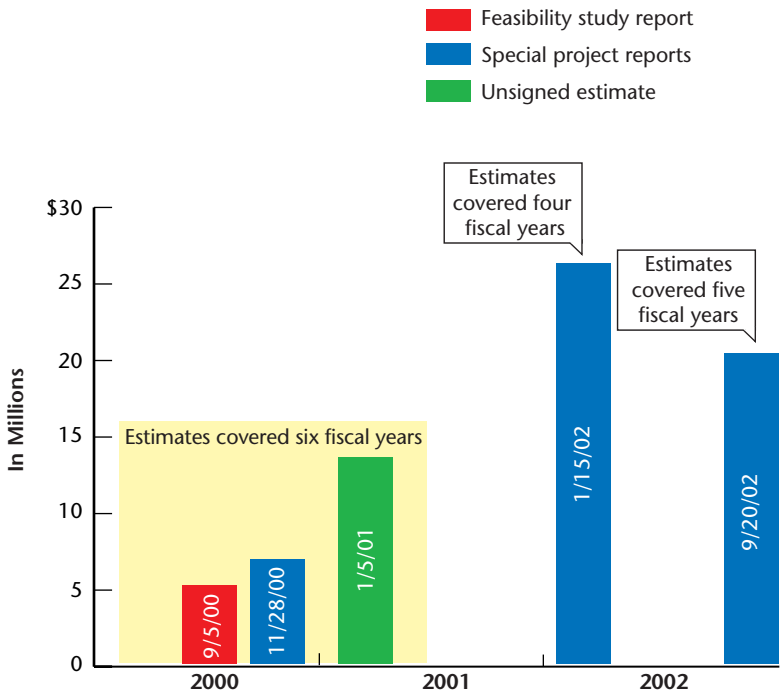
* Additional Web Council members were Arcot Systems Inc., EDS, Ariba, Primus Corporation, and Sybase.

† The StateStore is a separate entity from CAL-Store, formerly known as the California State Computer Store, which is the name of a master purchase agreement.

Note: This figure is presented on page 28 of the California State Auditor Report 2002-112.

FIGURE 2

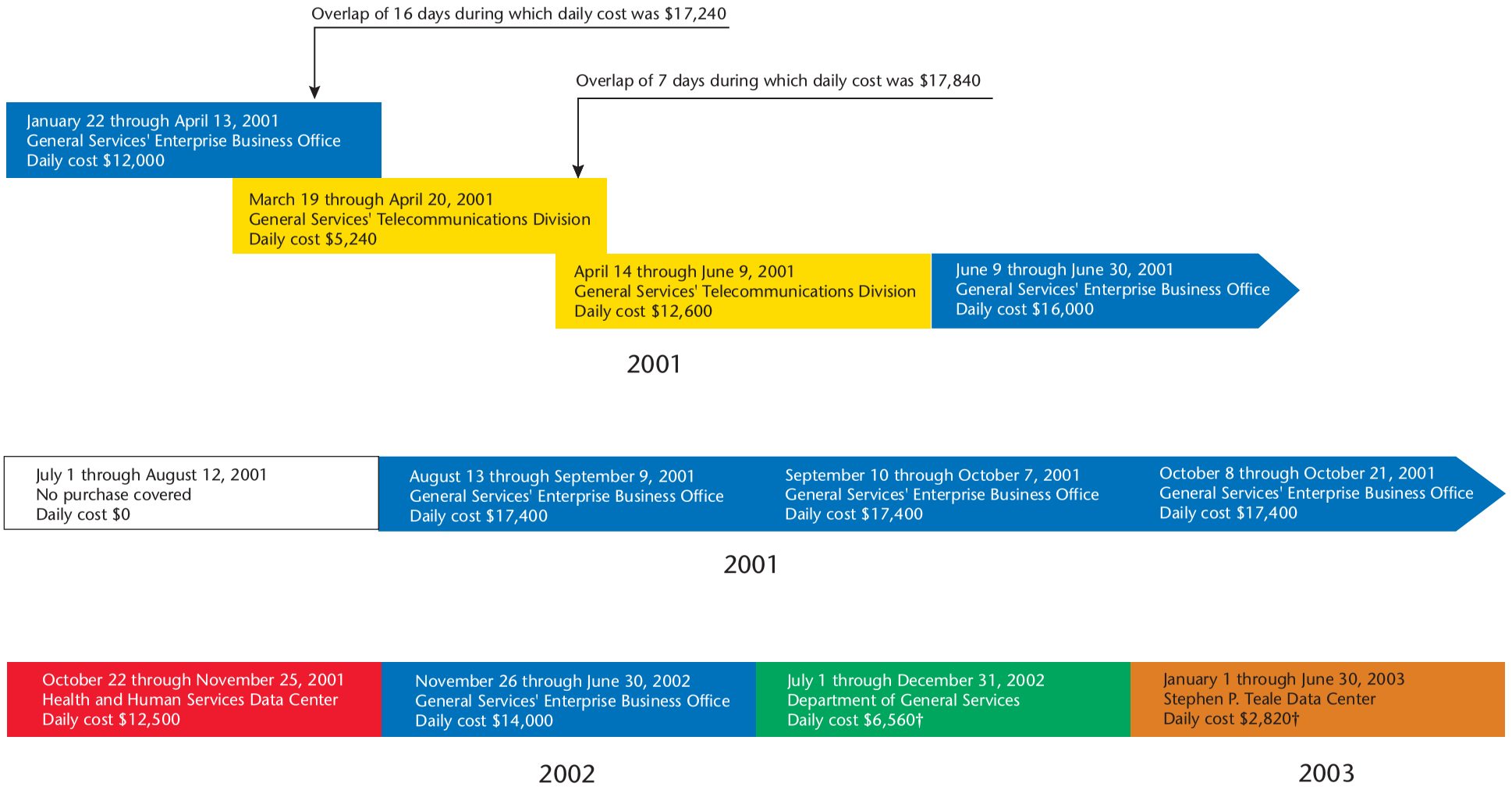
Web Portal Project Cost Estimates Increased Dramatically Between September 2000 and 2002



Note: This figure is presented on page 34 of the California State Auditor Report 2002-112.

FIGURE 3*

Purchases From Deloitte Consulting for Web Portal Maintenance and Operation

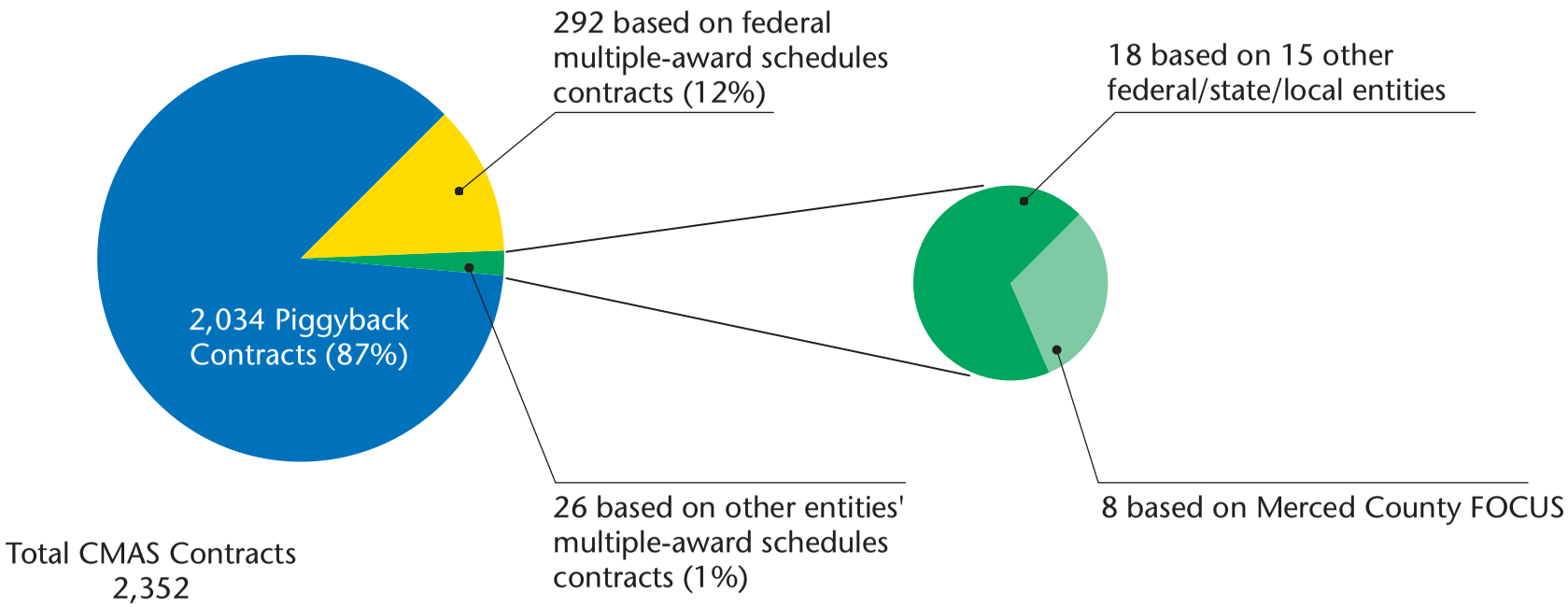

Overlap of 16 days during which daily cost was $17,240
Overlap of 7 days during which daily cost was $17,840
January 22 through April 13, 2001
General Services' Enterprise Business Office
Daily cost $12,000
March 19 through April 20, 2001
General Services' Telecommunications Division
Daily cost $5,240
April 14 through June 9, 2001
General Services' Telecommunications Division
Daily cost $12,600
June 9 through June 30, 2001
General Services' Enterprise Business Office
Daily cost $16,000
2001
July 1 through August 12, 2001
No purchase covered
Daily cost $0
August 13 through September 9, 2001
General Services' Enterprise Business Office
Daily cost $17,400
September 10 through October 7, 2001
General Services' Enterprise Business Office
Daily cost $17,400
October 8 through October 21, 2001
General Services' Enterprise Business Office
Daily cost $17,400
2001
October 22 through November 25, 2001
Health and Human Services Data Center
Daily cost $12,500
November 26 through June 30, 2002
General Services' Enterprise Business Office
Daily cost $14,000
July 1 through December 31, 2002
Department of General Services
Daily cost $6,560†
January 1 through June 30, 2003
Stephen P. Teale Data Center
Daily cost $2,820†
2002
2003

* This figure was not presented in California State Auditor Report 2002-112, but is intended to further illustrate information contained in the report.

† Services covered Monday through Friday, except state holidays.

FIGURE 4*

Numbers and Types of California Multiple Award Schedules Contracts
(As of October 2002)


292 based on federal multiple-award schedules contracts (12%)
18 based on 15 other federal/state/local entities
2,034 Piggyback Contracts (87%)
26 based on other entities' multiple-award schedules contracts (1%)
8 based on Merced County FOCUS
Total CMAS Contracts
2,352

*This figure was not presented in California State Auditor Report 2002-112, but is intended to further illustrate information contained in the report.

APPENDIX B

Recommendations From the August 2002 Governor's Task Force on Contracting and Procurement Review

In May 2002, the governor issued an Executive Order creating the Governor's Task Force on Contracting and Procurement Review (task force) to examine the State's contracting and procurement procedures and recommend any statutory, regulatory, or administrative changes necessary to ensure that departments use open and competitive bidding to the greatest extent possible in awarding state contracts. In addition, the governor asked the task force to recommend any statutory or regulatory changes to ensure adequate oversight of the procurement processes by state agencies and departments. The task force completed its directive from the governor in August 2002, recommending purchasing reforms, subsequently approved by the governor, that call for significant changes in the State's contracting and procurement procedures.

Table B.1 on the following pages list the task force recommendations as well as the approach the Department of General Services (General Services) has indicated it will use to implement the recommendations and its timeline for doing so.

TABLE B.1

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
1. General Services shall broaden the scope of the Quality Assurance Program so that state agencies conducting any state procurement are required to do so under authority granted by General Services, including orders placed with contractors holding leveraged procurement instruments established by General Services such as the California Multiple Award Schedules (CMAS) program and master agreements.	General Services issued a memo to all departments on January 31, 2003, announcing the inclusion of leveraged procurement instruments such as the CMAS program, master service agreements, Statewide Commodity Contracts, and State Price Schedules in its Quality Assurance Program. To fully implement this recommendation, General Services is developing training modules on leveraged procurements that will be included in the General Services' Training and Certification Program for Procurement Professionals (see Recommendation 8). Standards and assessment tools are being developed (see Recommendation 6) and these will be used in conjunction with regular compliance reviews to establish purchasing authority dollar levels commensurate with criteria established for compliance. General Services is also revising its Purchasing Authority Manual to include chapters regarding use of leveraged procurement instruments, which will contain instructions on conducting leveraged procurements for state agencies.
2. General Services shall adopt a policy that prohibits the acquisition of large-scale information technology (IT) system integration projects through the use of CMAS or master agreement orders, unless otherwise approved as a part of a feasibility study report.	General Services met with the Department of Finance to develop criteria to be used to redefine "large-scale system integration" projects. This criteria is being incorporated into a Management Memo that has a target release date of late February 2003. The acquisition process will actually be approved via the Information Technology Procurement Plan, which will be reflected in the Management Memo.
3. Specifically, with respect to the CMAS program, state agencies shall be required to follow the Management Memo 02-19 requirements to continue to solicit and obtain three price quotations, including at least one certified small business CMAS contractor, before placing an order. In addition, no single order should exceed $500,000.	Management Memo 02-19 established the policy. CMAS program materials are currently being updated to reflect the requirements of the Management Memo. The update will be disseminated via General Services' Procurement Division's Web page in mid-March 2003.
4. General Services shall develop written standards and criteria that will apply to any CMAS agreements established with vendors that do not hold federal General Services Administration (GSA) supply schedules.	**Vendors Without Base Agreements:** General Services has written standards and criteria that apply to any CMAS agreements established for vendors that do not hold federal GSA agreements, or nonfederal multiple award agreements. **Nonfederal-Based Agreements:** General Services revised its written standards and criteria for CMAS agreements that are based on nonfederal GSA supply schedules to: • Allow negotiated products, services, and prices only if the federal government approves them. • Require that the award of the nonfederal GSA supply schedule be based on minimum product and/or service requirements. Evidence of multiple award and competitive bid or cost-compared pricing will continue to be required. In addition, General Services has, among other things, initiated a partnership with the vendor community (Information Technology Association of America) to formulate additional CMAS reforms.

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
5. General Services shall perform random audits or compliance reviews of state agencies' contracting and procurement transactions executed under authority granted by General Services, including services contracts. General Services should also establish protocols to enable state agencies that have internal auditors to conduct audits and report the results to General Services.	To implement this recommendation, General Services doubled the number of staff dedicated to performing compliance reviews and overhauled the database of agencies to be reviewed to include those that have been purchasing without delegation* using leveraged procurement instruments (Recommendation 1). Additionally, General Services refined its compliance criteria and developed templates for the compliance review reports. New review staff have been immersed in intensive training and will begin on-site training at a state agency in February 2003. The on-site training will cover both goods and IT acquisitions. With the addition of the leveraged procurements into the purchasing authority program, staff will develop review criteria and increase review accountability and reporting to cover these issues. The purchasing authority and quality assurance manager is working with General Services' external auditors to define protocols for agencies' internal auditors and to define the requirements for review of non-IT services contracts.
6. General Services shall establish consistent standards tied to dollar thresholds that must be met for a state agency to be granted higher levels of procurement authority. These standards should take into consideration training, certification, demonstration of competency, and demonstrated capability to conduct self-audit or assessment through various means.	General Services is addressing the recommendation as part of its revision of the Purchasing Authority Manual. The revised manual will include a revised request for purchasing authority form that will include the standards. The first segment of the revised manual is scheduled for release June 30, 2003. Implementation of this recommendation will interface with Recommendations 8 and 19.
7. General Services shall develop a uniform set of policies, procedures, and processes to apply to all state contracts and procurements to ensure that the outcomes are consistent and fair, and foster competition. As a part of the recommendation, General Services should undertake an initiative to align the laws governing contracting and procurement of goods, services, and IT, including the award-protest processes.	General Services recognizes that the laws and rules governing state acquisitions may be inconsistent and ambiguous. The current organizational structure of the contracting and procurement functions may lead to inefficiencies or duplication of effort. To clarify the current method for conducting the acquisition of goods and services and improve its current methodologies, General Services is in the process of retaining a consulting firm to assist in implementing this recommendation. The request for proposal has been issued, proposals have been received, and proposal evaluations are now underway. It is anticipated that a contract will be awarded in late February 2003. The selected contractor is to perform a substantial review of the statutes, codes, and regulations relating to state acquisitions; federal requirements imposed on the State; and the State Administrative Manual, the California Acquisition Manual, the State Contracting Manual, and other relevant documents. The selected contractor will also make recommendations to simplify and promote uniformity among all state procurement and contracting approaches. In addition, the contractor will examine the organizational structure for policy development and implementation and provide recommendations for improvements. The contractor will also conduct an assessment of the internal structure and responsibilities for review and approval of individual contracting and procurement actions, and make recommendations to improve the procedures. General Services expects work on the contract to be completed by the end of July 2003. *continued on the next page*

* Purchasing delegation is the authority to procure goods or IT goods and services with a value over $100. General Services' Procurement Division makes these delegations to state departments that have demonstrated the capability to make purchases that adhere to state statute and policy. The Procurement Division monitors the delegation holders' purchasing program through purchasing program compliance and quality review.

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
8. General Services shall develop and deliver a comprehensive training and certification program for state contracting and procurement officials. Signature authority of individuals at state agencies should be linked to the level of training, experience, and proficiency achieved, as should the procurement authority of each state agency.	The first step in developing a comprehensive training program is to assess the needs of those to be trained. To do this, General Services entered into an interagency agreement with the Center for Management and Organization Development, California State University, Northridge (CSUN) to (a) identify the knowledge, skills, and abilities (i.e., competencies) required by individuals with procurement and contracting responsibilities, (b) conduct a needs assessment based on these competencies, and (c) recommend a comprehensive training program designed to enhance individual competencies. The training program would ultimately link successful completion of the program (including passing tests) to certification and to granting agency purchasing authority. To identify the knowledge, skills, and abilities comprising the procurement official's job, two focus groups were established from among the "best" at their jobs and represented agencies throughout the State. Using the results of the focus groups, a questionnaire was designed and made available online via the Internet and also mailed to these individuals. The results provide invaluable insight into the specific training needs of the group. It is significant to note that managers and journey-level procurement officers agreed strongly on the training needs of those working in the procurement field. Respondents indicated that procurement staff at all levels need foundation training in areas such as the emergency acquisition process, noncompetitive acquisitions, and file documentation. Based on the findings of the task force and the survey results, General Services will be phasing in a series of courses in state acquisitions over the next six months. The first classes offered will be Acquisition Ethics and Leveraged Procurements in April 2003. General Services is developing a basic program that will lead to a certificate for procurement and contracting personnel. A certification will be linked to an agency's purchasing authority. General Services expects to offer the first course in this series at the beginning of fiscal year 2003–04. In addition, General Services is: • Categorizing the survey findings for additional programs at the intermediate and advanced levels. It will identify specialized topics, based on the survey findings, for career development workshops. • Discussing with legal staff an appropriate means of delivering training on high-risk contracts. • Exploring the possibility of providing selected programs online. • Discussing with both the Department of Personnel Administration (DPA) and the CSUN (a) the best means for registering and tracking participants, (b) techniques for evaluation and testing, and (c) the award of professional development certificates.
9. General Services shall adopt clear standards of conduct for contracting and procurement officials. Violations of the standards should be subject to disciplinary action.	California Government Code, sections 19572 et. seq. and 19990 specify the current statutory grounds for discipline in the state civil service system. Though these particular sections may encompass some of the commonly occurring defalcations involved in state contracting abuses, it is their initial assessment that a code of conduct is needed to set more specific criteria and standards for those involved in state contracting. This will provide a firm basis for discipline under the more general statutory sections and will also provide clear warning regarding prohibited activities for both civil servants and exempt employees. Because of the many required procedures involved in civil service discipline (e.g., progressive discipline), stakeholders (DPA and unions) need to be involved in development of procurement conduct standards. Meeting with these parties was to begin the second week in February 2003. These ethical standards will be part of the core curriculum in the contracting training to be conducted by General Services. General Services has begun the process of collecting standards of conduct from other jurisdictions. The completion date for this activity should be June 2003.

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
10. General Services shall adopt clear standards of conduct for vendors that do business with the State. Violators of the standards should be subject to suspension or debarment.	General Services is currently evaluating best practices by researching the federal government and other states. It will then evaluate current statutes and regulations to see where gaps exist and changes need to be made, determine if the appeal process can be used in the administrative process, establish criteria for authority and process, and establish criteria for standards of conduct. General Services characterized the implementation of this recommendation as long term.
11. General Services shall meet with industry representatives and state stakeholders to develop model contract terms and conditions that will protect the State's interests and mitigate risk for all parties.	General Services implemented the first phase of this recommendation in January 2003 when it posted new model contract language on the Procurement Division Web site. A letter signed by the department director will go out soon, requiring agencies to use the new provisions in all bids and disallowing modifications without prior approval from General Services. General Services met with the Information Technology Association of America, an organization of IT industry representatives, and with both state and private counsel. As a result, General Services made significant revisions to the IT General Provisions and IT purchasing modules now posted on the Procurement Division Web site. IT General Provisions and non-IT Commodities General Provisions were separated into two documents. The IT General Provisions were modified as follows: • The Limitation of Liability clause was revised to limit a contractor's liability to two times the purchase price, and the purchase price was defined. • The Indemnification clause was changed to require the State to notify the contractor of any claim and to give the contractor control over the defense of any action on a claim, subject to certain conditions. • The Rights in Data clause was modified to give the State "Government Purpose Rights" to any work product prepared by the contractor. The contractor retains property rights. • The Patent, Copyright, and Trade Secret Indemnity clause was changed to clarify the language. These changes to the IT General Provisions bring the State's contract language more in line with industry standards and with what other states are doing. It is expected that the revisions will result in more businesses bidding on contracts and ultimately lower costs to the State for IT projects.
12. General Services shall facilitate industry and state stakeholder participation in continuous improvement of contracting and procurement processes through the establishment of advisory councils.	General Services' Procurement Division recognizes that customer input is vital to the successful implementation and continuous improvement of procurement and contracting processes. In implementing this recommendation, General Services has established working advisory groups comprising industry and state stakeholders. For industry stakeholder participation, several supplier participants were selected based on recommendations from the Procurement Division's acquisition management team and the supplier community. The industry working group will provide guidance and expertise on many of the reform initiatives while providing their perspective on state government contracting practices used to obtain an array of goods and services. For state stakeholder participation, existing focus groups established by other initiatives, as well as the General Services' Partnership Council, have been called upon to provide input on procurement and contracting processes. The state working group is composed of top-level executives from throughout state government. These executives will lend their expertise to the Procurement Division in several areas. Both groups are being asked to act as sounding boards as General Services brings forward major issues relating to procurement reform recommendations. Their input will be collected and disseminated to various management teams to resolve issues and assist in implementation. These working groups will be available on an ongoing basis to provide their input on issues as they arise.

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Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
13. General Services shall implement an integrated system for tracking contracts and procurements for goods and services executed by state agencies.	The first phase in implementing this recommendation was completed when General Services launched a pilot contract and procurement registration system with eight state agencies in December 2002. The system captures data such as agency name, contract type, amount, term, and amendment information. This system was to be implemented on February 18, 2003. General Services will then begin working on the tracking component of the project. This Internet-based system will capture detailed information on contracts and procurements and will provide General Services' management with data it needs to oversee the statewide contract and procurement functions.
14. General Services shall implement a comprehensive electronic procurement (eProcurement) system for all state contract and procurement transactions, to include the following: • Public access to contracting and procurement opportunities, as well as historical information. • Links to online policies and procedures and decision support system, and online training. • Product and pricing comparisons. • Rules-based approval routing so that no transaction can be issued without appropriate approvals. • Reverse auctions, in which the requirement is advertised and bids are placed online. The prices can be seen but the vendors names remain confidential until the bidding (auction) is closed. • Data capture for all transactions, and generation of required reports, eliminating redundant reporting wherever possible.	General Services established the successful CAL-Buy Phase I project and is currently developing the requirements for Phase II of the eProcurement initiative. The CAL-Buy Phase I eProcurement system, which was implemented in March 2001, currently automates purchasing from over 250 statewide commodity contracts by over 300 buyers in five state agencies (General Services, Corrections, Transportation, Highway Patrol, and Youth Authority), and seven local governments. CAL-Buy successfully reduced the procurement cycle time, saving the State both time and money. CAL-Buy implemented several features for increased accountability, including automated workflow for approval of orders based on dollar thresholds, enforcement of contract expiration dates, and a detailed audit trail of all activity related to purchases. CAL-Buy made ordering from certified small businesses just as easy as from large ones, and approximately 46 percent of the $38 million spent to date has been awarded to small businesses. While CAL-Buy is in maintenance and operations mode, General Services is analyzing the options for moving forward with Phase II and this procurement reform recommendation. It is General Services' intention that Phase II will include automating more contracts such as the CMAS program and master service agreements and adding functionality for contract management and one-time buys. In response to the fiscal challenges currently facing the State, it is prudent to first implement eProcurement within General Services, and later as a roll out to other state agencies. By starting with General Services, the eProcurement system will be fully tested, features utilized and enhanced, and risk minimized prior to moving out to the rest of state government. This approach will help to maximize the success of eProcurement and fully address the requirements within this reform recommendation.

Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
15. General Services shall ensure active legal participation in all high-risk contracting or procurement transactions. At a minimum, the following types of transactions should be identified as high risk: • All large-scale IT system integration projects. • Transactions in which there is a history of protest or litigation for this or like contracts. • Public safety. • Acquisition of unique or specially manufactured goods or services. • Complex projects. • Proposed deviations from standard processes or terms and conditions (e.g., advance payments, modification to warranty, indemnity, or liability language, etc.). • High-profile transactions. • Potential conflicts of interest. • Hazardous activity. • Federal matching funds. • Goods and IT goods contracts over $500,000, IT services contracts over $200,000, and non-IT services contracts over $50,000.	Managers from General Services' Office of Legal Services (Legal Services) and the Procurement Division have established an implementation team to work out the process-related details involved in providing expanded legal services for assistance in the development and review of IT and commodity contracts, especially those identified as high risk. This involves the identification of roles and responsibilities, a roll-out plan for state agencies, and identifying opportunities to optimize contracting and control processes. Legal Services has dedicated additional staff for expanded legal services and has formed an IT team to provide in-depth analysis of contracts and contract-related issues. In addition, it has established regular office hours in the Procurement Division in order to be more accessible to Procurement Division staff. Delegation of review policy development is pending a determination of contract proficiency levels in other departmental legal staffs.
16. General Services shall develop and deliver training to state agencies on conducting an initial, high-risk review of contract and procurement transactions, using criteria established by General Services. State agencies shall forward to General Services for review and approval contracts that meet any of the high-risk criteria.	For the initial phase of this recommendation, General Services has developed a list of high-risk transactions that require review and approval by General Services' legal staff. Included in this list are contracts for goods over $500,000, IT services over $200,000, and combination contracts of IT goods and services over $200,000. These are categories of contracts that have not been subject to legal review in the past. General Services is preparing a Management Memo to announce this policy. Training in high-risk contracts will be covered in General Services' Training and Certification Program for procurement professionals (Recommendation 8). Delegation of high-risk contract review to client agencies will be considered after General Services has had an opportunity to evaluate these contracts and determine which are appropriate for delegation.
17. General Services shall develop electronically based model contract templates with standard terms and conditions for use by state agencies to expedite review processes for low-risk contracts.	The completion of Recommendation 11 was the first step in the implementation of this recommendation. To improve the model contract provisions, General Services' staff met with the Information Technology Association of America, an industry group, and agreed on the new model contract provisions that were posted on General Services' Web site in January 2003. Completion of that task provides one part of the foundation legal work necessary for the development of the model contract templates needed for this recommendation. General Services will continue to review and revise model contract language in preparation for the development of model contract templates.

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Task Force Recommendation	Approach and Implementation Status as of February 14, 2003
18. General Services shall require each state agency to designate official(s) responsible for all contracting and procurement within the state agency.	In mid-November, General Services sent a memo to department directors and agency secretaries requesting their cooperation in identifying a procurement and contracting officer. General Services completed a roster of procurement and contracting officers on January 31, 2003.
19. General Services shall authorize individual signature authority for contracting and procurement officials, based on position held, experience, training, and certification.	General Services researched current requirements relating to contract signature authority in California statutes and surveyed state agencies for procedures currently in effect. They also contacted other states to determine current methodologies for granting contract signature authority. General Services also surveyed other states and the federal government for best practice approaches. Policy is being developed that will interface with Recommendations 6 and 8.
20. After six months, and again after 12 months, General Services shall evaluate the effectiveness of its efforts to implement all short-term recommendations and prepare a report to the governor on the status of those efforts.	General Services characterized the implementation of Recommendations 1, 2, 3, 4, 5, 11, 12, 13, 15, 16, 18, and 19 as short term and included the evaluation of its effectiveness in implementing the recommendations in its six-month report to the governor on February 14, 2003.

Sources: *Recommendations:* Executive Summary, The Governor's Task Force on Contracting and Procurement Review Report, August 2002. *Approach and Implementation Status*: Department of General Services' Report to the Governor on the Implementation of the Recommendations of the Task Force on Contracting and Procurement Review, February 14, 2003.

APPENDIX C

History of Maximum Purchase Limits for the California Multiple Award Schedules Program

Table C.1 on the following page shows the dollar thresholds and general guidelines for purchases departments made using the California Multiple Award Schedules (CMAS) program established by the governor's May 20, 2002, Executive Order on contracting practices as well as the thresholds and guidelines established before and after the order. The dollar limits for information technology (IT) goods and services and non-IT services were lowered by the Executive Order but went back to their previous levels during the interim period between May and August 2002, when the Governor's Task Force on Contracting and Procurement Review made its recommendations. The most significant changes to CMAS purchasing practices during this interim period were stricter requirements for departmental use of the CMAS program and increased departmental oversight of CMAS purchases. Since August 20, thresholds have remained constant, but restrictions on exemptions have increased. Specifically, General Services no longer allows departments to use CMAS contracts for any purchases that exceed the dollar thresholds. By eliminating exemptions to the CMAS dollar thresholds, General Services compels departments to use alternative procurement methods, greatly reducing the risk that the CMAS program is used inappropriately.

TABLE C.1

History of CMAS Maximum Purchase Limits

Date	IT Goods and Services	Non-IT Goods	Non-IT Services
Pre-Executive Order			
Before February 2001	$500,000	$100,000	Not Allowed
February 2001 through May 19, 2002	500,000	100,000	$250,000
	Exemptions to limits had to be approved by requesting department director and General Services. After February 2001 change, purchases of non-IT services greater than $35,000 required General Services' approval.		
	Until January 2002, comparing contracts and offers was strongly encouraged but not required. Beginning in January 2002, guidance was ambiguous about whether comparing contracts and offers was required.		
Executive Order and Interim Guidelines			
May 20, 2002, Executive Order	$100,000	$100,000	$100,000
	Any purchase over $100,000 must be competitively bid, with some exceptions.		
May 28 through August 19, 2002, interim guidelines	500,000	100,000	250,000
	No exemptions allowed. Purchases of non-IT services over $35,000 had to be approved by General Services. Some additional requirements implemented for purchases between $100,000 and the $250,000 and $500,000 maximums.		
	Three price quotes required with some exceptions.		
Post-Executive Order and Formal Guidelines			
August 20, 2002, to present	$500,000	$100,000	$250,000
	Three price quotes required with some exceptions.		
August 20, 2002, through January 20, 2003	**No exemptions allowed.** Purchases of IT goods and services exceeding $250,000 had to be approved by department director or the next highest ranking official. Purchases of non-IT services **exceeding $50,000** must be approved by General Services.		
January 21, 2003, to present	**No exemptions allowed.** Purchases of IT goods and services exceeding $250,000 **must also be approved by the agency secretary.** Purchases of non-IT services exceeding $50,000 must be approved by General Services.		